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

SECOND SECTION

CASE OF STRAZIMIRI v. ALBANIA

(Application no. 34602/16)

JUDGMENT

Art 3 • Inhuman treatment • Degrading treatment • Poor conditions of detention and inadequate medical treatment of a mentally ill person subject to a court-ordered compulsory medical treatment • "Therapeutic abandonment"
Art 5 § 1 (e) • Lawful arrest or detention • Detention in penal facility of mentally ill individual who had been exempted from criminal responsibility • Authorities' longstanding failure to set up a special medical institution integrated into health system, in breach of domestic law • Structural problem
Art 5 § 4 • Speediness of review • Three years' delay in appeal proceedings entirely attributable to the authorities
Art 5 § 5 • Compensation • Absence of enforceable right to compensation in respect of the specific violations of Articles 5 §§ 1 and 4

STRASBOURG

21 January 2020

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Strazimiri v. Albania,

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

Robert Spano, *President,*
Marko Bošnjak,
Valeriu Griţco,
Egidijus Kūris,
Ivana Jelić,
Arnfinn Bårdsen,
Darian Pavli, *judges,*

and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 10 December 2019,

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

PROCEDURE

1. The case originated in an application (no. 34602/16) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Albanian national, Mr Arben Strazimiri ("the applicant"), on 11 June 2016.

2. The applicant was represented by Ms E. Skendaj of the Albanian Helsinki Committee. The Albanian Government ("the Government") were represented by their then Agent, Ms A. Hicka of the State Advocate's Office.

3. The applicant complained that the conditions of his detention and inadequacy of the medical treatment received had been contrary to Article 3 of the Convention. He also complained that (i) his confinement in prison had not been ordered "in accordance with a procedure prescribed by law" and had not been "lawful", within the meaning of Article 5 § 1 of the Convention, (ii) he had not been given the possibility of having the lawfulness of his detention reviewed "speedily" by a court as required by Article 5 § 4, and (iii) he did not have an enforceable right to compensation in respect of the alleged breaches under Article 5, as required by Article 5 § 5 of the Convention. Lastly, he complained of a lack of an effective remedy and about having been discriminated against on the grounds of his mental illness, contrary to Articles 13 and 14 of the Convention, respectively.

4. On 5 October 2016 notice of the complaints under Articles 3, 5 § 1, 4 and 5, Articles 13 and 14 of the Convention was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973. When he lodged his application he was being detained in the Tirana Prison Hospital ("the Prison Hospital"). He has been diagnosed with paranoid schizophrenia.

A. Judicial proceedings concerning the applicant's compulsory medical treatment

1. First set of proceedings

6. The applicant was arrested in April 2008 *in flagrante delicto* while attempting to commit murder. He was subsequently committed for trial for attempted premeditated murder.

7. On 25 March 2009 the Tirana District Court found that the applicant, who had committed the criminal offence of attempted premediated murder, was to be exempted from criminal responsibility on account of his mental illness and ordered the applicant's "compulsory medical treatment in a medical institution" (*trajtim i detyruar në një institucion mjekësor)*, in accordance with Article 46 of the Criminal Code. The decision was based on a medical expert report of 23 May 2008, which had found that "the applicant [had] committed the offence under the influence of his illness, as a result of which he could not be held accountable for his actions, and the applicant needed compulsory inpatient treatment as he was considered 'a person of high social risk'".

8. The Tirana District Court's decision took into consideration the fact that:

> "1. The Tirana District Court [had] ordered the applicant's compulsory outpatient medical treatment under the care of his family in a decision of 13 January 2006;
>
> 2. The Tirana District Court [had] ordered the applicant's temporary hospitalisation in the Prison Hospital's psychiatric wing in a decision of 8 March 2007;
>
> 3. The Tirana District Court [had] ordered his release from prison in a decision of 27 December 2007."

9. On 8 April 2009, based on the writ of execution of the Tirana District Court's decision of 25 March 2009, the applicant was sent to Kruja Prison.

2. Second set of proceedings

10. On an unspecified date in 2010 the applicant requested the revocation of the decision of 25 March 2009. The Tirana District Court ordered another medical examination of the applicant's state of mental health. A medical report of 7 July 2010 found that:

"1. The applicant suffered from paranoid schizophrenia;

2. His condition was not stable.

3. It is recommended to continue with the applicant's compulsory inpatient medical treatment."

11. On 27 October 2010, on the basis of the aforementioned medical report, the Tirana District Court ordered the continuation of the compulsory inpatient medical treatment. The court further stated that the applicant's family members had not demonstrated that they could offer conditions which would be appropriate considering the applicant's societal risk on account of his illness. On 11 March 2011 the Tirana Court of Appeal upheld that decision.

12. On 30 March 2011 the prosecutor issued a writ of execution of the courts' decisions.

13. On 20 June 2011 the applicant was transferred to the Prison Hospital, where he was being detained when he lodged his application.

3. Third set of proceedings

14. On 16 January 2013 the Tirana District Court reviewed *proprio motu,* in accordance with Article 46 of the Criminal Code, the applicant's compulsory inpatient medical treatment. After considering two different medical reports, the court ordered the continuation of the applicant's compulsory inpatient treatment on the ground that it was justified by the applicant's state of health, the inability of his family to ensure conditions appropriate to his state of health as well as the applicant's failed attempts to commit suicide. That decision was upheld on appeal on 3 April and 30 May 2013 by the Tirana Court of Appeal and the Supreme Court, respectively.

15. On 15 April 2013 the prosecutor issued a writ of execution of the Court of Appeal's decision of 3 April 2013.

4. Fourth set of proceedings

16. On an unspecified date the applicant's representative applied to the Tirana District Court to have the applicant's inpatient treatment revoked, arguing that his condition had improved, and for it to be replaced with outpatient treatment. The Tirana District Court accepted a request on the applicant's representative's part to add two independent experts to the team of experts from the Forensic Medical Institute which was tasked with providing a medical report to the court. The team of experts provided two different medical reports.

17. The first medical report of 9 December 2013 stated, *inter alia*, the following:

"1. Mr Strazimiri still suffers from paranoid schizophrenia.

2. His current mental health is not stable, he demonstrates uncontrolled psychotic symptoms.

3. The best treatment for him, keeping in mind the protection of his life and of the life and health of others, is compulsory inpatient medical treatment.

4. Based on his current mental health and the current level of risk that he represents for society, such a measure is still necessary".

18. The second medical report of 12 December 2013 drawn up by the two independent experts proposed by the applicant's representative provided, *inter alia*, the following:

"1. Mr Strazimiri still suffers from paranoid schizophrenia.

...

3. Given his current state of health, Mr Strazimiri cannot yet be discharged for voluntary treatment (*mjekim të lirë*). The best treatment for him, however, is compulsory outpatient medical treatment ...

4. Based on his current psychiatric condition and the level of risk for society, compulsory medical treatment in a psychiatric institution, namely at the Prison Hospital, is no longer necessary."

19. The Tirana District Court examined both medical reports and, on 3 February 2014, it ordered the continuation of inpatient treatment, stating the following:

"Mr Strazimiri used to be subject to compulsory outpatient treatment ... which resulted in being ineffective, as he attempted to murder A.R ... On the basis of the expert reports drawn up throughout these years, the documents submitted during this set of proceedings and the evidence available in the case file, the court finds that this offence was committed as a result of the medication non-adherence (*transkurimit të mjekimit*) on the part of Mr Strazimiri ... Consequently, compulsory outpatient treatment does not provide any assurance that Mr Strazimiri will not commit other criminal offences against third parties and/or suicidal acts.

The experts appointed by Mr Strazimiri highlighted the necessity of medication adherence and the provision of family care to treat the illness; otherwise his state of health will deteriorate.

The court notes that, at the hearing of 3 February 2014, in spite of his being calm, Mr Strazimiri punched the prison police officer who was escorting him in the face for no apparent reason. This action demonstrates that Mr Strazimiri continues to be violent and dangerous to third parties even though he is supervised by specialised personnel.

...

In 2012 Mr Strazimiri attempted suicide, even though he had been under strict medical supervision and in special conditions appropriate for his mental health which his family would not have been able to afford.

Mr Strazimiri has stated that he is eagerly awaiting his release in order to use alcohol and narcotic substances.

...

> The applicant's family members have not proved that they could afford proper medical treatment proportionate to the level of risk he poses to society due to his mental health."

20. The Tirana District Court concluded that compulsory medical treatment in a medical institution was the only measure commensurate with the risk the applicant posed, the need for continuous attention to his life and health, and the protection of his family members and members of the community.

21. That decision was upheld on appeal on 11 June and 25 September 2014 by the Tirana Court of Appeal and the Supreme Court, respectively.

22. On 20 June 2014 the prosecutor ordered the enforcement of the Court of Appeal's decision of 11 June 2014.

(a) Fifth set of proceedings

23. On 17 September 2014, the applicant, relying on Articles 3 and 5 of the Convention, the Constitution, the Criminal Code, the Code of Criminal Procedure and the Mental Health Act, lodged a complaint with the Tirana District Court requesting that the latter end his degrading and inhuman treatment and his confinement in the Prison Hospital, and place him for treatment in a special medical institution under the Ministry of Health. He claimed that his conditions of detention as well as the medical treatment afforded to him in the prison facilities had been considered by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") as inhuman and degrading. He referred to a protocol on the diagnostics and therapeutic care of schizophrenia adopted by the Ministry of Health, according to which his illness would be treated in an effective way by combining medication with other supporting therapies.

24. On 20 November 2014 the Tirana District Court found that, based on the evidence before it, the applicant's lawyer had not pointed to any particular instances of inhuman or degrading treatment, other than the lack of provision of medical treatment, or that the applicant had been deprived of his freedom unlawfully. It dismissed the complaint as manifestly ill-founded, stating the following:

> "Drawing from the evidence obtained during this set of proceedings, and in particular from a letter of the General Directorate of Prisons ("the Prisons Service"), it transpires that:
>
> - On 23 September 2009 Mr Strazimiri, owing to the reconstruction of the Prison Hospital, was sent to Kruja Prison to serve the compulsory medical treatment. Kruja Prison is a specialised institution, offering around-the-clock health services (provided by doctors and nurses) ...
>
> - Since 26 June 2011Mr Strazimiri has been transferred to a specialised wing set up for the treatment of mentally ill persons at the Prison Hospital.

- The group of patients to which Mr Strazimiri belongs should be dependent on the Ministry of Health. The Ministry of Justice and the Prisons Service have been negotiating for their transfer to the Ministry of Health. Actually, the majority of this group of patients who are subject to a medical measure have been accommodated at Kruja Prison and 20% of them have been accommodated at the Prison Hospital.

According to a letter from the Prison Hospital it transpires that 'Mr Strazimiri has been hospitalised and continues to receive specialised treatment at the Prison Hospital, including the respective therapy according to the diagnosis ... we wish to inform you that the Prison Hospital has placed all persons subject to compulsory treatment in a special wing. This has been so, because this category of patients cannot stay with other patients who are hospitalised on health grounds and would stay temporarily until their rehabilitation or improvement of the state of health. Even though this category of patients has been placed in a special wing, the administration of the Prison Hospital has taken all measures to ensure respect of their rights deriving from the Prison Hospital regulation, as approved by the Ministry of Justice. It is worth mentioning their right to outdoor exercise ..., to group and individual counselling, to inclusion in various socio-cultural activities, to lodge a complaint; those interested can get involved at the library; and the right to legal advice.'

...

It is true that the Mental Health Act (law no. 44/2012) states that persons who are subject to court-ordered compulsory medical treatment should undergo this measure in specialised health institutions which are part of the integrated health system. However, it does not state that such institutions should be answerable to the Ministry of Health. According to section 29, the Ministry of Health is obliged to provide specialised assistance.

It is equally true that such institutions do not exist in the Republic of Albania. Still, the State has taken necessary measures to remedy such situation until the construction of specialised institutions. Cooperation amongst the Prisons Service, the Ministry of Justice and the Ministry of Health has been ongoing to address this problem.

...

The court finds that Mr Strazimiri's complaint is unfounded on evidence and law. It therefore decides to dismiss it."

25. On 22 December 2015 the Tirana Court of Appeal upheld the Tirana District Court's decision of 20 November 2014.

26. On 11 January 2016 the applicant appealed against both decisions to the Supreme Court. It appears that the case is still pending before the Supreme Court.

B. Proceedings against the enforcement of court decisions ordering the applicant's compulsory medical treatment

27. On 17 July 2014 the applicant challenged the prosecutor's execution order of the Court of Appeal's decision of 11 June 2014 (see paragraph 22 above). The applicant argued that, since he was neither a convict nor detained pending trial, his placement in a penal institution, such as the Prison Hospital which was dependent on the Prisons Service, was contrary

to domestic law, namely Article 46 of the Criminal Code and section 45 of the Execution of Criminal Judgments Act, and also contrary to the court's decisions ordering his placement in a special medical institution. He submitted that such placement had been found to be in breach of domestic law by the CPT and the People's Advocate.

28. On 20 October 2014 the Tirana District Court dismissed his complaint as manifestly ill-founded, finding that the enforcement order had been issued in accordance with domestic law. On 14 April 2015 the Tirana Court of Appeal upheld that decision.

29. On 21 April 2015 the applicant appealed against both decisions to the Supreme Court. It appears that this set of proceedings is still pending before that court.

C. The applicant's criminal complaints

1. First set of proceedings

30. On 24 July 2014 the applicant lodged a criminal complaint with the Tirana prosecutor's office claiming that the prosecutor's orders, which had placed him first in Kruja Prison and then in the Prison Hospital, had been in breach of the law (see paragraphs 9, 12, 15 and 22 above). In addition, the applicant requested that the prosecutor's office open a case and start criminal proceedings against the public officials who had been responsible for the above-mentioned violation. He further alleged that his inadequate treatment in those institutions, as supported by the CPT findings, was inhuman and degrading.

31. On 30 September 2014 the prosecutor's office responded that, as there was no special medical institution in the country catering for individuals suffering from mental disorders who were subject to court-ordered compulsory medical treatment, the placement of the applicant in the said institutions had not been contrary to law. Further to its response, on 29 October 2014 the prosecutor's office provided the applicant with information it had received from the Prisons Service, which had explained that a number of individuals subject to court-ordered compulsory medical treatment had been placed in Kruja Prison by a prosecutor's decision of 23 September 2009 owing to refurbishment work taking place at the Prison Hospital. The Prisons Service stated that this category of people should depend on the Ministry of Health and negotiations were underway between the Ministry of Justice and the Prisons Service for their transfer to the Ministry of Health.

32. Following a complaint to the Prosecutor General, the prosecutor's office registered a criminal complaint based on the instructions provided by the Directorate for the Review of Investigation and Prosecution (*Drejtoria e Kontrollit te Hetimit dhe Ndjekjes Penale*) of the Prosecutor General's Office. On 26 January 2015 the prosecutor's office decided not to institute

any criminal proceedings in connection with the applicant's complaint, finding that he was not subjected to inhuman or degrading treatment or to an unlawful deprivation of his liberty. The prosecutor acknowledged that no specialised institutions existed in the country to cater to the needs of mentally ill persons who were subject to court-ordered compulsory medical treatment. Mentally ill persons would continue to undergo this measure in establishments which the authorities had adapted for this purpose, until the construction of a specialised institution.

33. On 10 June 2015 the Tirana District Court, following the applicant's appeal against the prosecutor's decision, rejected the appeal. It appears that the proceedings are pending before the Court of Appeal.

2. Second set of proceedings

34. On 23 July 2015 the applicant lodged a complaint with the prosecutor's office, asking the latter to open criminal proceedings against the administrators and managers of the Prison Hospital and Kruja Prison for the alleged commission of arbitrary actions, the alleged failure to take measures to end unlawfulness, the alleged detention in custody without a decision, and the alleged violation of the equality of citizens under Articles 250-253 of the Criminal Code.

35. On 3 September 2015 the prosecutor decided not to institute criminal proceedings for these offences. It does not appear that the applicant has lodged an appeal against the prosecutor's decision.

D. Medical expert reports concerning the applicant's state of health

1. Report of 11 September 2015

36. As part of his observations, the applicant submitted a medical expert report of 11 September 2015 which had been ordered by the Tirana District Court in accordance with Article 46 of the Criminal Code in order to review the applicant's medical situation. The medical experts were asked to respond to the following questions:

> "1. Does Mr Strazimiri still suffer from any mental disorders?
>
> 2. If yes, which?
>
> 3. What is the mental condition of Mr Strazimiri at this time?
>
> 4. If he still suffers from any mental disorders, what is the best way to treat him, bearing in mind the protection of his life and health and that of others:
>
> a) compulsory outpatient treatment
>
> b) compulsory inpatient treatment in a medical institution?
>
> 5. Is the compulsory medical treatment ordered by the Tirana District Court in its decision of 25 March 2009 still necessary?"

37. The findings of the medical experts were the following:

"The patient still suffers from paranoid schizophrenia, a chronic disease, without any remission in his case. There is a high risk of violence due to the illness.

Active psychotic symptoms are still visible, although positive change is noticeable compared to the last medical report. The fact that his thinking process depends on, and alters as a result of, internal and external factors bears a high risk of unpredictable behaviour.

Based on his medical file, he frequently manifests dysphoric behaviour, at least every two months, requiring urgent injections, and in the meantime he is being treated with a combination of anti-psychotics at a high dosage.

Apart from the psychosis that he currently manifests and his history of aggressiveness and unpredictable behaviour, he also manifests non-adherence to and non-compliance with his medical treatment schedule, therefore presenting difficulties in his treatment as an outpatient.

Therefore, compulsory inpatient medical treatment is recommended."

2. Report of 14 February 2017

38. As part of his observations, the applicant submitted a medical report of 14 February 2017 which had been ordered by the Tirana District Court in accordance with Article 46 of the Criminal Code in order to review the applicant's medical situation as part of a separate set of proceedings, the outcome of which has not been disclosed to the Court. The medical experts were tasked with responding to the same questions indicated in paragraph 36 above.

39. The findings of the forensic experts were the following:

"Mr Strazimiri has suffered for many years from paranoid schizophrenia. This illness has conditioned his judgment and behaviour, engendering a high risk of unpredictable behaviour.

According to a HCR-20 (historical, clinical, risk management) evaluation, which is a tool to measure risk of violent behaviour ... this patient has met the three components of HCR and was classified as a high social risk.

In this examination, following the Tirana District Court decision, it was found out that, thanks to a high and multi-therapeutic dose (of anti-psychotics) (*u konstatua se me doza të larta dhe politerapeutike*) the clinical management of the illness had ensured neither relapses nor exacerbation. Considering that there has been a manifest change in one of the three components [of HCR], we leave it to the court to decide on the appropriate medical measure.

Conclusions

1. Arben Strazimiri suffers from mental illness.

2. Arben Strazimiri suffers from paranoid schizophrenia.

3. Arben Strazimiri presently manifests attenuated symptoms of the illness.

4. In view of the present progress of the illness, despite the positive aspects, we cannot recommend mandatory outpatient treatment, leaving it to the court to assess the imposition of the medical measure.

5. Being of the opinion that one of the three components has displayed changes, we leave it to the court's assessment to decide on the medical measure."

3. Report of 27 March 2017

40. The applicant's representative commissioned an independent forensic expert to carry out an assessment of the applicant's medical condition. The expert was tasked with conducting a comparative assessment of the applicant's medical treatment during his years of compulsory confinement in prison medical centres. The expert report made reference to the World Health Organization Protocol on Medical treatment of Paranoid Schizophrenia and pointed out that deinstitutionalisation and several forms of psychotherapy represented the standard practice in respect of the effective treatment of this type of pathology. Regarding the applicant's condition on the date of the visit (27 March 2017) the expert observed that he had presented with mental disorders. Furthermore, the expert report stated that almost all the medication set out in the protocol had been prescribed to the patient, while he had undergone none of the psychotherapies deemed as essential for his recovery (such as group therapy, family therapy, social and vocational rehabilitation, and so forth). The Prison Hospital lacked the very basic medical conditions and trained medical personnel to carry out that treatment. Therefore, the application to the patient of almost all types of medication available in the plan for the treatment of this pathology, coupled with a total lack of psychotherapy and the prison regime (which also involved significant periods of isolation), largely risked becoming counterproductive and reducing significantly the chances of a potential recovery of the patient. The forensic expert urged that the applicant be transferred to a proper medical centre where he could undergo indispensable psychotherapy and also have his treatment plan thoroughly reviewed.

E. Correspondence with State institutions

41. On 12 January 2015 the General Directorate for Strategic Planning and Audit of Justice Affairs of the Ministry of Justice sent a letter to the applicant's representative, stating, amongst other things, the following:

"The problems concerning the treatment of (mentally ill) persons subject to court-ordered compulsory medical treatment have been inherited and remained unaddressed for a period of more than 10 years, owing to the absence of a "specialised institution" in the health system, which would offer compulsory treatment to this category of people in accordance with the Mental Health Act (law no. 88/2012) and the Execution of Criminal Decisions Act (law no. 8331/1998)."

A memorandum of understanding, entered into between the Ministry of Justice and the Ministry of Health, had been appended to the letter, enlisting the undertakings of each institution for the treatment of mentally ill persons.

42. On 28 April 2016, following a request from the applicant's representative, the Prison Hospital provided some information on the conditions in that institution. The letter stated, *inter alia*, the following:

> "1. One hundred and six people currently receive inpatient treatment, of whom forty-four are subject to compulsory medical treatment and twenty-two are subject to temporary hospitalisation. All individuals, who have been deprived of their freedom and who suffer from health problems, are hospitalised in this institution.
>
> 2. The capacity of the institution is ninety-nine [patients] as approved by order of the Director General of the Prisons Service no. 303, dated 23 March 2016.
>
> 3. The number of medical personnel is forty-six. ...
>
> 4. Individuals who are subject to compulsory medical treatment receive health care service to the best possible standards. They are accommodated together with individuals belonging to the same category, while respecting the general principles. They are under the care of a psychiatrist who works full time for the institution. ... Their treatment with medication is in line with the medication protocol for psychotropic drugs of different classes. ... As regards the general infrastructure, despite continuous improvement, it is not possible to do more owing to the limited number of beds and an ever-increasing demand. The ultimate solution would be to create standards following the example of other more developed countries and ... to establish a special forensic institution.
>
> 5. Persons having mental health problems are treated with individual treatment programmes for persons with psychological and psychiatric disorders aimed at improving the psycho-emotional state ...
>
> Amongst the rehabilitating and therapeutic activities, it is worth mentioning: individual and group counselling, social-cultural activities...outdoor exercise...and board games ..."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Legislative framework on mentally ill people

1. Constitution

43. The Constitution provides, in so far as relevant, as follows:

Article 25

> "No one may be subjected to torture, cruel, inhuman or degrading punishment or treatment."

2. Code of Criminal Procedure ("the CCP")

44. The Code of Criminal Procedure provides, in so far as relevant, as follows:

Article 46

Compulsory medical treatment

"1. Whenever the mental conditions of the defendant warrant that he or she should undergo medical treatment, the court shall order, even *proprio motu,* the hospitalisation of the defendant in a psychiatric institution.

2. When compulsory medical treatment has been ordered or when it must be imposed on the defendant, the court shall order that the defendant be placed in a psychiatric institution.

3. The prosecutor can apply to the court to decide on the hospitalisation of the defendant in a psychiatric institution during preliminary investigations and, if any delay gives rise to risks, the prosecutor shall order temporary hospitalisation until the court takes a decision."

Chapter V – Compensation for unjust imprisonment

Article 268

Requirements for application

"1. Whoever is acquitted by a final decision is entitled to compensation for the pre-trial detention time served, unless it has been proven that the wrongful decision or failure to discover an unknown fact in due time was caused, wholly or in part, by the person him- or herself.

2. The same right belongs to a person who was placed in pre-trial detention, if a final decision states that the [decision] by which the security measure was imposed was in breach of the requirements provided in Articles 228 and 229 [of the CCP].

3. The provisions of paragraphs 1 and 2 shall also apply to individuals in respect of whom the proceedings have been discontinued (*pushuar*) by the courts or a prosecutor.

4. When a court decides that the fact does not constitute a criminal offence by law, because the criminal provision has been repealed, the right to compensation is not recognised for the time served before the repeal of the said provision."

Article 269

Request for compensation

"1. An application for compensation must be lodged within three years of the date on which the decision of acquittal or discontinuation (*pushimi*) became final; otherwise it shall not be accepted.

2. The amount of compensation and its assessment, as well as compensation in the event of house arrest, are prescribed by a specific Act."

3. Criminal Code

45. The Criminal Code provides, in so far as relevant, the following:

Article 46

Medical and educational measures

"The court may impose medical measures on individuals who were not criminally responsible who have committed criminal offences ...

Medical measures shall be the following:

1. Compulsory outpatient medical treatment;

2. Compulsory inpatient medical treatment in a medical institution;

....

The court decision on the imposition of medical ... measures can at any time be revoked if the circumstances under which they were imposed cease to pertain. In any case, the court shall reconsider its decision one year after the date of its adoption.

The rules relevant to revoking the court decision imposing the medical ... measures are provided for in the Code of Criminal Procedure."

4. Compensation for Unlawful Detention Act (Law no. 9381 of 28 April 2005)

46. Under section 3 of this Act unlawful detention is considered the period of: (1) pre-trial detention if the prosecution has stopped the investigation or the court has acquitted the accused or dismissed the case; (2) detention after conviction by a court when later on the conviction has been quashed, an acquittal decision has been rendered or the case has been dismissed by a final decision; (3) extra time served than that ordered in a final decision; (4) pre-trial detention when, by a final decision, it has been proven that the decision was issued in breach of Articles 228 and 229 of the CPC; (5) pre-trial detention beyond the statutory time-limit; (6) unlawful detention due to a mistake in the writ of execution, and (7) house arrest as laid down under points (1), (3), (4) and (5).

5. Rights and Treatment of Prisoners and Individuals in Pre-trial Detention Act (Law no. 8328, dated 16 April 1998, as amended – hereinafter "the Rights and Treatment of Prisoners Act")

47. The Rights and Treatment of Prisoners Act initially applied to all individuals sentenced to imprisonment by a final court decision. The 2014 amendments, which entered into force on 29 May 2014, extended its application to individuals in pre-trial detention. As relevant to the case before the Court, the Rights and Treatment of Prisoners Act, as amended in 2014, provides as follows:

Section 10 – Personalised treatment

"Treatment of prisoners [or individuals in pre-trial detention] shall be administered in accordance with the individualisation criteria and by having regard to the individual characteristics and situation of each prisoner [or person in pre-trial detention].

Bespoke treatment shall be administered by assessing individual psychological and social needs, age, gender, health status, sexual orientation or gender identity, social and economic situation, and the environment where the person in pre-trial detention or prisoner has lived, risk factors and motivation of the person to become involved in activities organised in [the] penal institution.

The monitoring [process] shall commence at the start of treatment and the results shall be continuously assessed during its implementation, by making necessary adjustments in consultation with the prisoner [or person in pre-trial detention].

Section 11 – Treatment plan and its implementation

"Following assessment, a treatment plan shall be drawn up in consultation with the person in pre-trial detention or the prisoner.

A reintegration plan shall be drawn up for each person in pre-trial detention or prisoner, while an individual treatment plan, regard being had to their specific needs, shall be drawn up for special categories of people in pre-trial detention or prisoners. Special emphasis shall be placed on [providing] psycho-social treatment to ... individuals with mental-health disorders.

...

Monitoring, planning and implementation of treatment is administered by the personnel of the [penal] institution in consultation with relevant State institutions.

..."

Section 16 – Special medical institutions and special medical sections

"Special medical institutions [placed] outside of the penal institutions and special medical wings [found] within the penal institutions serve the purpose of providing treatment for individuals in pre-trial detention and prisoners with mental-health disorders.

The placement of individuals in special medical institutions [placed] outside the penal system is carried out in application of a court decision.

The placement of individuals in special medical wings [within the penal institutions] shall be carried out in application of a court decision or of a prosecutor's execution order. In urgent cases, the director of the [penal] institution, in which a person in pre-trial detention or prisoner is found, may, upon immediately informing the prosecutor, order his or her placement [in special medical sections].

Upon a proposal of the director of the [penal] institution, a request of the person in pre-trial detention or prisoner, or his or her legal guardian, or on the court's own initiative, the court may, by observing the one-year time-limit for the re-evaluation of the person's condition, order the discharge of the person concerned from the special medical institution.

The person in pre-trial detention, the prisoner, his or her legal representative or guardian shall have the right to appeal against the placement, refusal of placement, discharge or refusal of discharge from special medical institutions to a court within five days of receiving notice.

Treatment in special medical wings [found] within the penal institutions shall be administered for as long as the court does not order treatment in a special medical institution, as defined in the Mental Health Act.

As guaranteed by this Act, the rights of individuals in pre-trial detention and prisoners placed in special medical institutions and special medical wings, as well as their patients' rights, shall be respected.

The Minister of Justice and the Minister of Health [may], through a joint instruction, determine the manner of implementing procedures related to the treatment of this category of individuals."

Section 33/1 – Health care for special categories

"Health care in penal institutions is administered without discrimination ...

Treatment of individuals suffering from mental-health disorders is administered in accordance with the Mental Health Act. Individuals in pre-trial detention and prisoners who are held in penal institutions and suffer from mental-health disorders have the right to special health care at the special medical wings of penal institutions or at the Prison Hospital.

...

The Prisons Service shall take measures to ensure the administration of necessary health services in penal institutions and, failing that, in specialised institutions outside of the penal system."

6. Mental Health Act

48. The Mental Health Act, which came into force in 1996 (Law no. 8092 of 21 March 1996), did not have any provisions about the treatment of mentally ill prisoners or individuals who were exempted from criminal responsibility on account of mental-health disorders.

49. The Mental Health Act 1996 was replaced by a new Mental Health Act which entered into force on 31 May 2012 (Law no. 44/2012). As relevant to the case before the Court the Mental Health Act 2012 provides as follows:

Section 28

Special medical institutions

"1. Special medical institutions are institutions catering for the treatment of individuals with mental-health disorders who have committed a criminal offence, in respect of whom the competent court has ordered compulsory [medical] treatment in a medical institution, of individuals in pre-trial detention or prisoners who manifest mental-health disorders during the execution of their penalty, and for the treatment of individuals in respect of whom the court has decided [to impose] temporary placement in a special medical institution, under Article 239 of the Code of Criminal Procedure.

2. The individuals placed in special medical institutions are treated in the same way as the other patients manifesting mental-health disorders. The special medical institutions, defined in paragraph 1 of this section, are part of the integrated health system. The parameters for the establishment and operation of these special medical institutions and security measures to ensure their safety [and security] are determined by a decision of the Council of Ministers."

Section 29

Mental health in penal institutions

"1. Prisoners and individuals in pre-trial detention, who are placed in penal institutions and suffer from mental-health disorders, have the right to receive special medical treatment in these institutions or in the Prison Hospital.

2. Mental-health treatment and care, as laid down in paragraph 1 of this section, is provided in a non-discriminatory way and in accordance with health standards applied to other categories of people suffering from mental-health disorders.

3. In application of paragraph 1 of this section, the Ministry of Health, through mental-health services, provides all the necessary assistance to diagnose, treat and rehabilitate individuals suffering from mental-health disorders, as required."

7. The Execution of Criminal Decisions Act (law no. 8331/1998 as amended by law no. 10024/2008)

50. Section 13 of the Execution of Criminal Decisions Act provides that the prosecutor issues a writ of execution of criminal decisions. Section 46 states that "medical measures relating to compulsory treatment are executed at a specialised medical institution as determined by the Ministry of Health upon the prosecutor's request".

8. Facilities for persons having mental disorders

51. According to the action plan for the development of mental health services in Albania for the period 2013-2022, as accessed on the website of the Ministry of Health[1], the network of civilian mental health facilities consists of psychiatric hospitals, psychiatric wings in civilian hospitals, mental health community centres and residential (care) homes.

B. Other domestic law

Code of Civil Procedure

52. On 5 November 2017 a number of amendments to the Code of Civil Procedure (Law no. 38/2017) entered into force. The relevant articles pertaining to the length of proceedings read as follows:

"Chapter X - Examination of requests concerning a breach of the reasonable time requirement, acceleration of proceedings and just satisfaction

Article 399/1 - Scope

1. The courts, depending on the level of jurisdiction of [domestic] proceedings as specified in this Chapter, shall be competent to examine requests concerning the payment of just satisfaction to a person who has suffered pecuniary and non-pecuniary damage on account of the unreasonable length of proceedings, as defined in Article 6 § 1 of the [Convention].

2. The provisions of this Chapter shall lay down the procedure to determine the reasonable length of proceedings and just satisfaction, if there has been a finding that the investigation, the court proceedings and the enforcement proceedings of a court decision have been unreasonably long.

...

Article 399/9 – Acceptance of a request

1. https://shendetesia.gov.al/wp-content/uploads/2018/08/pv1.pdf

1. The court shall accept the request if it finds a breach of the reasonable time requirements, in accordance with Article 6 § 1 of the [Convention].

..."

C. Domestic case-law and reports

1. Supreme Court decisions

53. In its decision no. 00-2014-1950 of 14 July 2014, the Supreme Court set out the various categories of people whose mental health would affect the outcome of criminal proceedings, as follows: individuals who were not criminally responsible at the time of the commission of a criminal offence, but were subject to criminal proceedings, and on whom a court imposes a compulsory medical measure; individuals who were partially responsible at the time of the commission of a criminal offence, and were subject to criminal proceedings, security measures and were eventually sentenced to a lower penalty; individuals who were criminally responsible before the commission of a criminal offence and, subsequent to the commission of the offence, suffered from mental-health disorders or illness and were awaiting criminal trial, in respect of whom medical treatment could be ordered in application of Articles 43-46 of the Code of Criminal Procedure or a stay of criminal proceedings could be ordered in accordance with the law; individuals convicted of a criminal offence (they had been criminally responsible at the time of the commission of the offence and during trial), who suffered from mental-health disorders while serving the prison sentence, whose mental-health disorders would be an obstacle to the execution of the criminal decision and in respect of whom early release from prison may be ordered.

54. The Supreme Court held that, under Article 46 of the Criminal Code, a trial court could impose medical measures only on a person who had been held not criminally responsible in respect of the commission of a criminal offence and had been exempted from criminal responsibility on account of his or her mental health. The type of medical measure to be ordered would depend on the psychiatric condition of the perpetrator, the risk he or she posed to society, and the need for treatment. Section 16 of the Rights and Treatment of Prisoners and Individuals in Pre-trial Detention Act provided for placement of individuals in pre-trial detention and prisoners with mental-health disorders in special medical institutions, [to be established] outside of the penal system, in order to receive medical treatment in application of a court decision.

55. The Supreme Court reiterated these principles in a subsequent decision no. 00-2016-347 of 2 March 2016.

2. People's Advocate's reports

56. The applicant submitted four reports produced by the People's Advocate's (Ombudsman) Office, in its role as the National Preventive Mechanism set up under the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Reports concerning the Prison Hospital

(i) Report of 22 January 2015

57. On 22 January 2015 the People's Advocate issued a report following a visit to the Prison Hospital on 9 December 2014. The report noted that the Prison Hospital had a capacity of ninety-nine places, while it was accommodating, at the time of the visit, a total of ninety-seven inmates, including fifty-one individuals receiving court-ordered "compulsory treatment" and "temporary hospitalisation". There was no separation of people in pre-trial detention from prisoners. Inmates were placed in three distinct wings corresponding to the nature of the illnesses from which they were suffering.

58. As regards the material conditions, the building was in an advanced state of dilapidation, with widespread damp on the walls and a complete lack of central heating. The inspecting team received complaints about the state of hygiene and sanitary facilities as well as the lack of a central heating system. The showers were in urgent need of repair. There was a shortage of basic hygiene products, which were provided by family members. While there was no problem with the provision of running water, inmates reported, however, that there had been occasions when there had been no hot water to take a shower. As regards security, the building was fitted with closed-circuit television (CCTV) cameras, which were installed in the grounds and inside the buildings.

59. Inmates would meet with their family members four times a month in a specially designated area. The psychiatric wing consisted of ten rooms, which were devoid of furniture. Mattresses and bed linen were torn. The inspecting team was informed that damage to furniture and bed linen could be attributed to inmates. However, in the view of the People's Advocate, this allegation did not suffice to justify the fact that inmates were kept in degrading and inhuman conditions. Natural lighting was poor owing to small windows, and artificial lighting was insufficient.

60. As regards the conduct of any activities, there was no library, nor was there a place of worship. The psycho-social personnel stated that provision of activities was scarce owing to the lack of appropriate premises and the state of health of inmates. Small-group activities concerning social issues and current affairs were organised twice a month. Individual

counselling was carried out once a month with each inmate, while there was no group counselling. Art therapy and gardening classes would take place occasionally. Individual treatment plans were heavily focused on people who had attempted to commit suicide or on drug addicts. Intervention from psycho-social personnel was not satisfactorily coordinated with medical personnel.

61. All inmates were satisfied with the provision of health care. Doctors carried out daily consultations each morning. There had been a shortage of medication in the pharmacy, which had been remedied following the allocation of additional budgetary resources.

(ii) Report of 5 January 2016

62. On 5 January 2016 the People's Advocate issued a report following a visit to the Prison Hospital on 25 November 2015. The report noted that the Prison Hospital had a capacity of ninety-nine places, while it was accommodating, at the time of the visit, a total of 103 inmates, including sixty individuals subject to a court order in respect of "compulsory treatment" and "temporary placement".

63. The report contained almost the same findings as those described in the report of 22 January 2015.

3. Protocol on the diagnostics and therapeutic care of schizophrenia

64. The Protocol on the diagnostics and therapeutic care of schizophrenia, which was referred to by the applicant during the fifth set of judicial proceedings (see paragraph 23 above), was first published in December 2010 and was approved by the Ministry of Health. The following are some excerpts relating to the treatment of the illness.

> "1.3 The importance of adequate treatment of schizophrenia
>
> ... Schizophrenia is one of the main causes of disability across the world. It is the eighth main disease for people of 15-45 years of age, according to a study conducted by the World Health Organization. The optimal treatment of patients must be multi-faceted. This requires the combination of best pharmacological therapies with the best non-pharmacological therapies. Notably, when improvement happens as a result of the administration of small doses of [drugs], by using anti-psychotics (neuroleptics) old or new (atypical anti-psychotics), the patients can participate in various rehabilitating psycho-social programmes. The goal of a successful course of treatment shall be the reduction of symptoms, prevention of a psychotic episode in the future and re-integration of the individual in social life. A treatment plan which combines medication with support therapies is considered an effective plan."

III. RELEVANT INTERNATIONAL MATERIALS

A. Reports from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT")

1. Report of 22 January 2003 (CPT/Inf (2003) 9)

65. On 22 January 2003 the CPT's report on a periodic visit to Albania from 4 to 14 December 2000 was published. The report stated that the majority of mentally ill people who had been declared not criminally responsible should have been placed in a high-security psychiatric hospital. Instead, owing to the absence of such an institution, they had been admitted to the Prison Hospital.

2. Report of 22 January 2003 (CPT/Inf (2003) 11)

66. In its Report of 22 January 2003, following an *ad hoc* visit to Albania from 22 to 26 October 2001, the CPT stated, in so far as the application of the Mental Health Act 1996 was concerned, that "[the] Act, which includes a number of guarantees intended to safeguard the fundamental rights of patients, [had] still not [been] implemented in Albania, apparently because of a lack of will and collaboration on the part of the different parties involved (chiefly members of the medical and judicial professions). As stated previously (see CPT (2001) 29, paragraph 138), such failure can only undermine the foundations of the rule of law in Albania and perpetuates the image of an asylum-based psychiatry which was believed to have been consigned to history. Therefore, the [CPT] welcomes the recent decision by the Ministry of Health to set up an inter-ministerial committee to examine this question with other concerned departments, including the Ministry of Justice. The CPT wishes to receive updated information on the progress of this matter".

3. Report of 12 July 2006 (CPT/Inf (2006) 22)

67. In its Report of 12 July 2006, following an *ad hoc* visit to Albania from 13 to 18 July 2003, the CPT repeated the same findings as in its report of 22 January 2003 in so far as the application of the Mental Health Act 1996 was concerned.

4. Report of 12 July 2006 (CPT/Inf (2006) 24)

68. In its Report of 12 July 2006, following a periodic visit to Albania from 23 May to 3 June 2005, the CPT stated that it was "very concerned by the fact that, owing to a lack of appropriate alternative facilities, individuals who had been declared not criminally responsible were still being held in a prison setting [namely the Prison Hospital]". The CPT called "upon the

Albanian authorities to take steps without any further delay to accommodate people who have been declared not criminally responsible in a more suitable facility".

69. The CPT noted that the "Mental Health Act 1996 [was] still not being implemented, despite the specific recommendation repeatedly made by the CPT in all previous visit reports and despite the assurances given by the Albanian authorities in their response to the 2003 visit".

5. Report of 6 September 2007 (CPT/Inf (2007) 35)

70. The CPT carried out an *ad hoc* visit to Albania from 28 to 31 March 2006 in view of the persistent failure by the authorities to implement the Mental Health Act 1996. The CPT found that the same state of affairs persisted.

6. Report of 21 January 2009 (CPT/Inf (2009) 6)

71. In its Report of 21 January 2009, following an *ad hoc* visit to Albania from 16 to 20 June 2008, the CPT referred to consultations with the authorities concerning "the situation of individuals who had been declared not to be criminally responsible and were thus subject to the medical measure of compulsory 'medical treatment in a forensic institution' (under Article 46 § 1, of the Penal Code). As a matter of fact, all individuals concerned (seventy-eight at the time of the visit) were still being kept in the Prison Hospital, due to the lack of an appropriate facility outside the prison system". The CPT encouraged the authorities "to make all the arrangements necessary to ensure that [a] forensic institution is opened without delay".

7. Report of 20 March 2012 (CPT/Inf (2012) 11)

72. In its Report of 20 March 2012, following a periodic visit to Albania from 10 to 21 May 2010, the CPT "[had] raised the question of the presence at [the Prison Hospital], more than 13 years after its first visit to Albania, of psychiatric patients declared not to be criminally responsible and subject to a compulsory treatment measure in pursuance of [Article 46 § 1] of the C[riminal] C[ode], and of psychiatric patients subject to a temporary hospitalisation measure in pursuance of [Article] 239 of the CCP. These patients [were] still held at [the Prison Hospital] rather than in a specialised medical institution or in a psychiatric establishment, as ... provided for under the relevant Albanian legislation. To date, the Albanian authorities ha[d] failed to find a satisfactory solution to this problem, and there ha[d] been much indecision about whether to set up a specific establishment in Durres or in Kruja".

73. The CPT noted that "the Prison Hospital [was] not overcrowded. ... All the rooms ... [had] a washbasin and a partitioned sanitary facility. Further, they [were] of a reasonable size and [had] satisfactory access to

natural light and artificial lighting. In addition, the rooms [were] equipped with sufficient furniture. More generally, the general state of hygiene and cleanliness at [the Prison Hospital] could be described as on the whole satisfactory. ... As regards staff and treatment, with the notable exception of psychiatric care, the number of health-care staff at [the Prison Hospital] may be considered on the whole satisfactory. ... there [was] a striking shortage of staff as regards psychiatric care. A single psychiatrist – whose goodwill and energy should be emphasised – was responsible for over 70 psychiatric patients (of the 87 patients present in the hospital), of whom some 60 had been declared not to be criminally responsible and subject to a compulsory treatment order. Such a shortfall in the hours of attendance of psychiatrists must give rise to a speedy and decisive response from the Albanian authorities. [The Prison Hospital] should benefit from at least two full-time psychiatrists. The CPT recommends that urgent measures be taken to this end".

8. Report of 3 March 2016 (CPT/Inf (2016) 6)

74. On 3 March 2016 the CPT's report on a periodic visit to Albania from 4 to 14 February 2014 was published. Having visited the Prison Hospital and Kruja Prison, the CPT noted that it was "a matter of serious concern that, despite the specific recommendation repeatedly made by the CPT since 2000, 17 psychiatric patients declared not to be criminally responsible continued to be held in prison establishments in breach of national legislation, as a specialized forensic psychiatric institution had not yet been established. In addition, some two-thirds of the forensic psychiatric patients subject to court-imposed compulsory treatment (76 out of 104) were, at the time of the 2014 visit, being held at Kruja Prison in conditions which, in the Committee's view, were likely to amount to therapeutic abandonment. In fact, the establishment did not have a single psychiatrist for over a year, the nursing staff had been significantly reduced and no rehabilitative activities worthy of the name were on offer."

75. The CPT further noted that the material conditions in the Prison Hospital had remained on the whole satisfactory. However, the almost total lack of heating had been unacceptable. While patients had benefited from two hours of outdoor exercise, they were locked up for the rest of the day, without being offered any purposeful activities. The level of health-care staff had remained on the whole satisfactory. Still, the CPT stressed that it was "totally insufficient for [the Prison Hospital] to have only one psychiatrist to care for a total of 60 psychiatric patients (including 26 forensic patients who were subject to a compulsory treatment order). The situation was further exacerbated by the fact that the psychiatrist was *de facto* also responsible for the treatment of all psychiatric patients at the Kruja Prison." The CPT called on the authorities to take urgent measures to reinforce the psychiatric cover at the Prison Hospital.

76. The CPT found that the psychiatric treatment at the Prison Hospital had continued to be primarily based on pharmacotherapy and it had not observed any shortages of psychotropic drugs. In the absence of any psycho-social therapeutic activities, the CPT recommended that occupational and other psycho-social therapeutic activities be further developed at the Prison Hospital and be made available to the maximum number of psychiatric patients, in particular those who were subject to a compulsory treatment order.

9. Report of 24 May 2018 (CPT/Inf (2018) 18)

77. Following an *ad hoc* visit to Albania from 2 to 9 February 2017, in its report of 24 May 2018 the CPT expressed "serious concern that, despite the specific recommendation repeatedly made since the 2000 visit and contrary to national legislation, forensic psychiatric patients continued to be held in [the Prison Hospital and Kruja Prison] and under conditions which, in the CPT's view, could easily be considered for many patients to be inhuman and degrading. In fact, the living conditions in both establishments had further deteriorated since the 2014 visit (in particular in terms of state of repair and overcrowding), there was an almost total lack of heating and limited access to hot water, and the level of psychiatric care remained clearly insufficient. Overall, the delegation once again gained the impression of 'therapeutic abandonment' of many forensic psychiatric patients." The CPT called upon the Albanian authorities to provide without further delay a detailed plan for the creation of a forensic psychiatric facility and to take the necessary steps to ensure the speedy setting-up of such a facility.

78. The CPT found that the material conditions had deteriorated in terms of state of repair and hygiene at both the Kruja Prison and the Prison Hospital. Several cells were overcrowded at the Prison Hospital and the CPT was struck by the almost total lack of supply of heating since 2014. It made a number of recommendations to the authorities to take measures to improve the living conditions and to reduce the occupancy levels at the Prison Hospital.

79. While the CPT acknowledged the difficulties faced by the prison administration to recruit specialists in the field of psychiatry, it expressed concerns that, despite the specific recommendation made after the 2014 visit, the psychiatric cover in the Prison Hospital had not been increased. There was still only one psychiatrist for 84 forensic psychiatric patients (and six prisoners with a mental disorder).

10. Report of 17 September 2019 (CPT/Inf (2019) 28)

80. In its report of 17 September 2019, following a periodic visit to Albania from 20 to 30 November 2018, the CPT "expressed serious concern

that, despite the specific recommendation repeatedly made by the Committee since the 2000 visit and contrary to national legislation, forensic psychiatric patients continued to be held in the Prison Hospital and Kruja [Prison] and in unacceptable conditions. In fact, the living conditions in these two establishments had further deteriorated since the 2014 visit (in particular in terms of state of repair and overcrowding), and the level of psychiatric care remained clearly insufficient. Overall, the Committee gained the impression of 'therapeutic abandonment' of many forensic psychiatric patients".

81. While the Ministry of Health and the Ministry of Justice had indicated that "the Government was fully committed to creating a forensic psychiatric facility as a matter of priority and that consultations were ongoing with potential donors regarding the co-financing of its construction in the vicinity of Tirana", the CPT noted that the opening of a temporary facility to accommodate mentally ill persons "had been significantly delayed and that there was still a striking lack of clarity regarding the precise role of the Ministry of Health and Social Protection, the future management and staff of the facility."

B. Report from the Council of Europe Commissioner for Human Rights

82. The Council of Europe Commissioner for Human Rights ("the Commissioner") and her delegation visited Albania from 21 to 25 May 2018. In the summary of the report, the Commissioner stated as follows:

> "The Commissioner is concerned that despite the commitment of the authorities to moving towards deinstitutionalisation, there remain persons with intellectual and psycho-social disabilities, including children, in institutions for social care in Albania. The authorities are called on to draw up and implement, with the active involvement of persons with disabilities, a comprehensive plan for deinstitutionalisation and the replacement of institutions with community-based services, while ensuring that no deinstitutionalised person with a disability is left without the necessary protection and support. Abstaining from any new placement of persons with disabilities in institutional settings and ensuring that such persons are provided with community-based services would be an important step in the right direction."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

83. The Government submitted that the applicant's complaints should be rejected for failure to exhaust the domestic remedies. They admitted that the applicant had applied to the domestic courts to have his mental health re-evaluated and his compulsory inpatient treatment reconsidered. In

response, the Supreme Court had taken two final decisions on 30 May 2013 and 25 September 2014. Any complaints in respect of those sets of proceedings, which had ended with the Supreme Court's final decisions, should be rejected by the Court as being out of time.

84. As regards two other sets of proceedings in which the applicant had applied to the domestic courts to put an end to his degrading and inhuman treatment, the Government submitted that they were still pending before the Supreme Court and should therefore be rejected as premature.

85. As part of his application form, the applicant submitted that there were no effective remedies in the domestic system for his Convention complaints. He argued that, because the domestic courts had allowed the same situation to persist in spite of his unsuccessful complaints, he continued to be a victim of a practice in violation of the Convention.

A. Exhaustion of domestic remedies

86. The Court reiterates that the rule of exhaustion of domestic remedies obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. The rule is based on the assumption that there is an effective remedy available in respect of the alleged breach in the domestic system, whether or not the provisions of the Convention are incorporated in national law. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 220, ECHR 2014 (extracts)). At the same time, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospect of success (see *Grori v. Albania*, no. 25336/04, § 108, 7 July 2009).

87. Turning to the facts of the present case, the Court notes that the applicant used several domestic remedies to no avail, seeking relief from domestic courts about the alleged breaches of Articles 3 and 5 of the Convention. The Government did not demonstrate that either at the time the applicant lodged his application with the Court or thereafter there was another remedy, available in theory and practice, which was capable of providing redress.

88. The Court further observes that two sets of proceedings, in which the applicant challenged the conditions and lawfulness of his detention, have been pending before the Supreme Court since April 2015 and January 2016, and no decision has been given. In these circumstances, and given that the applicant remained in detention when he lodged his application, the Court

finds that the applicant's complaint under Articles 3 and 5 of the Convention cannot be considered to be premature on account of the impending judicial proceedings, nor can they be considered to be inadmissible on non-exhaustion grounds (see, for example, *Hadžić and Suljić v. Bosnia and Herzegovina*, nos. 39446/06 and 33849/08, § 32, 7 June 2011).

89. The Government's objection must therefore be dismissed.

B. Compliance with the six-month time-limit

90. The Court reiterates that the requirements contained in Article 35 § 1 as to the exhaustion of domestic remedies and the six-month period are closely interrelated. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of the knowledge of that act or its effect on or prejudice to the applicant (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 157, ECHR 2009). The Court has further stated that the six-month rule does not apply to continuing situations (ibid., § 159). In such cases, the six-month period runs from the cessation of that situation (see *Iordache v. Romania*, no. 6817/02, § 50, 14 October 2008). The concept of a "continuing situation" refers to a state of affairs which operates by continuous activities by or on the part of the State to render the applicant a victim (see *Petkov and Others v. Bulgaria* (dec.), nos. 77568/01,178/02 and 505/02, 4 December 2007).

91. The Court will now examine the application of the six-month rule to the applicant's detention in Kruja Prison and the Prison Hospital.

1. As regards the time spent in Kruja Prison

92. The Court notes that, as a result of court-ordered compulsory medical treatment, on 25 March 2009 the applicant was placed in Kruja Prison where he stayed until 20 June 2011 when he was transferred to the Prison Hospital. However, the applicant lodged his application with the Court on 11 June 2016, almost five years after he had left Kruja Prison. Most of the judicial proceedings occurred subsequent to his transfer from that facility. In these circumstances, the Court finds that this part of the application was submitted out of time for the purposes of Article 35 § 1 of the Convention, and therefore rejects it.

2. As regards the time spent in the Prison Hospital

93. The Court observes that on 20 June 2011 the applicant was transferred to the Prison Hospital where, on the basis of the documents in

the case file, he has been ever since (see paragraph 13 above). On several occasions in 2013 and 2014 the applicant unsuccessfully challenged his confinement in the Prison Hospital, the conditions of detention and the allegedly inadequate medical treatment offered to him (see paragraphs 14, 16, 23 and 27 above). Two sets of judicial proceedings instituted by the applicant have been pending before the domestic courts since April 2015 and January 2016. The applicant has raised the same complaints in his application to the Court.

94. The Court finds that, having regard to the continuous nature of the applicant's confinement in the Prison Hospital, where he has been kept since 2011, the persistent conditions of detention, the lack of adequate medical treatment of which he complains and the pending judicial proceedings, his complaints under Articles 3 and 5 refer to a "continuing situation" (see, for example, *Alimov v. Turkey*, no. 14344/13, § 57-62, 6 September 2016; *Fetisov and Others v. Russia*, nos. 43710/07 and 5 Others, § 75, 17 January 2012; and *Svipsta v. Latvia*, no. 66820/01, § 116 ECHR 2006-III (extracts)).

95. It follows that the Government's objection must be dismissed.

C. Conclusion

96. The Court considers that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further finds that they are not inadmissible on any other grounds. They must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

97. The applicant complained that the lack of adequate medical treatment received during his detention, combined with the poor conditions of detention, had amounted to a breach of Article 3 of the Convention, which reads as follows:

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

A. The parties' submissions

1. The applicant

98. The applicant submitted that his confinement in the Prison Hospital, combined with the inadequate medical treatment received, amounted to inhuman and degrading treatment. In his view, the national authorities had not distinguished between the punitive character of a prison sentence and the non-punitive nature of a compulsory medical treatment order. Despite the applicant's continuous efforts, the domestic courts had rejected his

claims, relying on the argument that outpatient treatment in respect of the applicant would pose a risk to the public interest and that the national and international monitoring authorities' findings about the conditions of detention did not qualify as sufficient evidence to substantiate his claims.

99. The applicant, relying on the People's Advocate's reports and CPT reports (see paragraphs 56-63 and 65-81 above), claimed that the Prison Hospital had not had sufficient personnel to take care of all its patients. He submitted that the authorities had not taken any steps to verify his claims of ill-treatment. The medical reports prepared by the authorities had not provided an appropriate and thorough analysis of the differences between the binding medical protocol to treat the applicant's mental illness in a civil psychiatric clinic and the applicant's treatment in the Prison Hospital. The medical reports had failed to comment on the impact that the treatment afforded to the applicant in the prison environment had had on his state of mental health. Such a failure had vested the domestic courts with unlimited discretion to speculate on the applicant's state of mental health during his compulsory confinement in the prison's facilities. The medical reports had not mentioned the potential implications that his treatment in the Prison Hospital would have on the applicant's mental health, not least because of the lack of indispensable psychotherapy. In any event, the applicant claimed that deinstitutionalisation (the process of replacing long-stay psychiatric hospitals with less isolated community mental-health services) had been the appropriate medical treatment for his illness.

2. The Government

100. The Government submitted that the applicant had been placed in special medical institutions in application of the domestic courts' decisions. He had received medical treatment appropriate to his condition. This was supported by the fact that he had applied to the domestic courts to have the measure changed or revoked, arguing that his condition had improved. The Government further referred to the information provided to the applicant's lawyer by the Prison Hospital, which had stated that the institution had accommodated 106 people, forty-four of whom had been subject to court-ordered compulsory medical treatment, with a medical-care staff numbering forty-six people (see paragraph 42 above). As a result, the applicant's claims were unfounded.

101. The Government further submitted that the domestic courts had taken into consideration the applicant's condition. The domestic courts had given decisions after receiving the opinion of medical experts, who had advised in favour of the continuing treatment of the applicant. In this connection, the Government made specific reference to the Tirana District Court's decision of 3 February 2014 (see paragraph 19 above). In their view, the applicant had failed to bring any evidence to challenge the findings of the medical experts.

102. The Government submitted that the measures imposed on the applicant had been in line with the Mental Health Act, which had provided that individuals subject to court-ordered compulsory medical treatment could serve this measure in medical institutions not necessarily under the Ministry of Health. They relied on section 29 of the Mental Health Act 2012 (see paragraph 49 above), which had stated that prisoners and individuals in pre-trial detention who had suffered from mental-health issues had had the right to receive special medical treatment in these institutions or at the Prison Hospital. It had been on the basis of that provision that the Ministry of Justice and the Ministry of Health had concluded a memorandum of understanding concerning their future cooperation.

B. The Court's assessment

1. General principles

103. The Court refers to the general principles laid down in the recent Grand Chamber judgment in the case of *Rooman v. Belgium* ([GC], no. 18052/11, §§ 141-48, 31 January 2019). In particular, the Court refers to the following paragraphs (references omitted):

> "147. In this connection, the "adequacy" of medical assistance remains the most difficult element to determine. The Court reiterates that the mere fact that a detainee has been seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate. The authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and his or her treatment while in detention, that diagnosis and care are prompt and accurate, and that where necessitated by the nature of a medical condition supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation, rather than addressing them on a symptomatic basis. The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through. Furthermore, medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole. Nevertheless, this does not mean that every detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities (...).
>
> 148. Where the treatment cannot be provided in the place of detention, it must be possible to transfer the detainee to hospital or to a specialised unit (...)."

2. Application of the above principles in the present case

104. In the first place, the Court considers that the applicant's mental-health problems, at the origin of his court-ordered compulsory medical treatment, have not been disputed. He was placed in a court-ordered compulsory medical treatment in a medical institution on the basis of several medical reports certifying that he suffered from paranoid

schizophrenia. It is for this reason that the applicant has been detained in Kruja Prison and in the Prison Hospital since April 2009.

105. Since the applicant has complained under Article 3 of the Convention of the material conditions of his detention and the inadequacy of the medical treatment he received, the Court will concentrate the examination of the complaint under Article 3 on those elements in respect of the period served in the Prison Hospital, regard being had to its findings in paragraphs 93-95 above. When examining the Article 3 complaint, account has to be taken of the cumulative effects of the conditions of detention, the duration of the detention and the inadequacy of the medical treatment (see *Dybeku v. Albania*, no. 41153/06, § 38, 18 December 2007).

106. As regards the material conditions in the Prison Hospital, the Court takes note of the People's Advocate's findings in 2015 and 2016 concerning that institution's advanced state of dilapidation, the widespread damp and the almost complete lack of central heating. The CPT, following its *ad hoc* and periodic visits in 2017 and 2018, echoed those findings in its two recent reports of 24 May 2018 and 17 September 2019, stating that the living conditions had further deteriorated in comparison to earlier visits. The Court takes note of the deterioration of the living conditions, including the lack of central heating in the Prison Hospital, which has persisted for a very long time. Of concern is also the fact that patients, like the applicant, benefited from inadequate out-of-room activities, as evidenced in the CPT report of 3 March 2016 (see paragraph 75 above). The Court considers that the applicant, having been detained in the Prison Hospital since June 2011, has been directly affected by the overall decline of the living conditions and the regime to which he was subjected.

107. As regards the applicant's medical treatment, a number of medical reports were produced in the course of the domestic proceedings, which showed that the applicant continued to suffer from paranoid schizophrenia, as a result of which he was following a course of medicine. In particular, according to the medical reports of 11 September 2015 and 27 March 2017, the applicant was continuously receiving the medication prescribed by doctors (see paragraphs 37 and 40 above).

108. The Court recalls its general principles in paragraph 103 above (see also *Blokhin v. Russia* [GC], no. 47152/06, § 146, 23 March 2016). There is however no indication that there was a comprehensive therapeutic strategy aimed at treating the applicant. For their part, the Government have failed to show that the applicant received adequate medical care, in particular the therapeutic treatment required by his condition. They did not submit an individualised treatment plan drawn up for the applicant, or substantiate the administration of therapeutic treatment to his benefit or the provision of adequate psychiatric care.

109. Furthermore, the Court places emphasis on the CPT's findings, at least since 2014, in respect of the insufficient level of psychiatric care and

the "impression of therapeutic abandonment" of many psychiatric patients, especially those subject to court-ordered compulsory medical treatment, such as the applicant. Furthermore, the medical report of 27 March 2017 took issue with the complete lack of provision of psychotherapy (see paragraph 40 above). The Court considers that it is for the authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used to preserve the physical and mental health of patients affected by mental health disorders (see *Dybeku*, cited above, § 47). Still, the Court cannot accept that patients, such as the applicant, be subjected to a state of "therapeutic abandonment". This is all the more so when the Ministry of Health has developed and approved a protocol on the diagnostics and therapeutic care of schizophrenia which decrees a combination of programmes of pharmacological treatment and psycho-social counselling (see paragraph 64 above).

110. Lastly, the Court notes that the applicant complained several times before the domestic courts of the inadequacy of the medical treatment and the conditions of his detention by articulating that a special medical institution would be the appropriate facility for him to be detained in. As a matter of fact, the domestic courts and the authorities, in particular the prosecutor's office and the Ministry of Justice, have acknowledged the absence of a special medical institution for mentally ill persons subjected to a court-ordered compulsory medical treatment. In the case of mentally ill individuals, the Court has held that the assessment of whether the treatment or punishment concerned is incompatible with the standards of Article 3 has to take into consideration the vulnerability of those individuals and, in some cases, their inability, to complain coherently or at all about how they are being affected by any particular treatment (see, for example, *Murray v. the Netherlands* [GC], no. 10511/10, § 106, 26 April 2016).

111. In these circumstances, the Court considers that the cumulative effect of the deterioration of the living conditions in the Prison Hospital where the applicant has been confined since 2011, and the insufficient psychiatric and therapeutic treatment administered to the applicant at the Prison Hospital, amounted to inhuman and degrading treatment.

112. Accordingly, there has been a violation of Article 3 of the Convention.

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

113. The applicant complained that his confinement in prison was not lawful or in accordance with a procedure prescribed by law. He relied on Article 5 § 1 of the Convention, the relevant parts of which provide:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

...."

A. The parties' submissions

114. The applicant submitted that the domestic courts had ordered compulsory medical treatment in a medical institution. However, the domestic authorities had placed him in a penal institution. The subsequent court decisions had not taken into consideration whether the domestic authorities had effectively executed the prior court decisions with respect to the nature of the institution the applicant was sent to serve the court-ordered compulsory medical treatment. Neither had they taken into account the lack of consent from the applicant's family concerning his confinement in the prison hospital. The applicant further pointed out that the Ministry of Justice and the Prisons Service had admitted that the establishment of custodial clinics for mentally ill individuals would have been the most appropriate way to secure the effective enforcement of domestic court decisions ordering inpatient medical treatment.

115. The Government contested that argument. They submitted that the applicant had been confined pursuant to court orders in compliance with a procedure prescribed by law. The domestic courts had appointed medical experts to carry out assessments of the applicant's state of health in compliance with Article 46 of the Criminal Code. In response, the medical experts had concluded that the applicant's condition had not been stable and that confinement had been appropriate.

B. The Court's assessment

1. General principles

116. The Court refers to the general principles laid down in the Grand Chamber's judgment in the case of *Rooman* ([GC], cited above, §§ 205-14). In particular, the Court refers to the following paragraphs (references omitted):

"208. Analysis of the Court's case-law, particularly as developed over the past fifteen years, shows clearly that it should now be considered that there exists a close link between the "lawfulness" of the detention of persons suffering from mental disorders and the appropriateness of the treatment provided for their mental condition. While this requirement was not yet set out in the first judgments delivered in this area (...), from which it appeared that the therapeutic function of compulsory confinement was not as such guaranteed under Article 5, the current case-law clearly indicates that the administration of suitable therapy has become a requirement in the context of the wider concept of the "lawfulness" of the deprivation of liberty. Any detention of mentally ill persons must have a therapeutic purpose, aimed specifically, and in so far

as possible, at curing or alleviating their mental-health condition, including, where appropriate, bringing about a reduction in or control over their dangerousness. The Court has stressed that, irrespective of the facility in which those persons are placed, they are entitled to be provided with a suitable medical environment accompanied by real therapeutic measures, with a view to preparing them for their eventual release (...).

209. As to the scope of the treatment provided, the Court considers that the level of care required for this category of detainees must go beyond basic care. Mere access to health professionals, consultations and the provision of medication cannot suffice for a treatment to be considered appropriate and thus satisfactory under Article 5. However, the Court's role is not to analyse the content of the treatment that is offered and administered. What is important is that the Court is able to verify whether an individualised programme has been put in place, taking account of the specific details of the detainee's mental health with a view to preparing him or her for possible future reintegration into society (...). In this area, the Court affords the authorities a certain latitude with regard both to the form and the content of the therapeutic care or of the medical programme in question.

210. Further, the assessment of whether a specific facility is "appropriate" must include an examination of the specific conditions of detention prevailing in it, and particularly of the treatment provided to individuals suffering from psychological disorders. Thus, the cases examined in the case-law illustrate that it is possible that an institution which is *a priori* inappropriate, such as a prison structure, may nevertheless be considered satisfactory if it provides adequate care (...), and conversely, that a specialised psychiatric institution which, by definition, ought to be appropriate may prove incapable of providing the necessary treatment (...).These examples make it possible to conclude that appropriate and individualised treatment is an essential part of the notion of "appropriate institution". This conclusion stems from the now inevitable finding that the deprivation of liberty contemplated by Article 5 § 1 (e) has a dual function: on the one hand, the social function of protection, and on the other a therapeutic function that is related to the individual interest of the person of unsound mind in receiving an appropriate and individualised form of therapy or course of treatment. The need to ensure the first function should not, *a priori*, justify the absence of measures aimed at discharging the second. It follows that, under Article 5 § 1 (e), a decision refusing to release an individual in compulsory confinement may become incompatible with the initial objective of preventive detention contained in the conviction judgment if the person concerned is detained due to the risk that he or she may reoffend, but at the same time is deprived of the measures – such as appropriate therapy – that are necessary in order to demonstrate that he or she is no longer dangerous (...)."

2. Application of the above principles in the present case

117. It is undisputed that the applicant's detention amounts to a deprivation of liberty and that Article 5 is applicable. As regards the deprivation of liberty of individuals suffering from mental disorders, an individual cannot be considered to be of "unsound mind" and deprived of his or her liberty unless the following three minimum conditions have been satisfied: firstly, she or he must reliably be shown to be of unsound mind; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement; thirdly, the validity of continued confinement

depends upon the persistence of such a disorder (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33, and *Stanev v. Bulgaria* [GC], no. 36760/06, § 145, ECHR 2012).

118. The Court, having regard to the three conditions set out in the *Winterwerp* case-law concerning the deprivation of liberty of "persons of unsound mind", observes that the applicant suffers from paranoid schizophrenia, as has been medically attested since at least 2009. His medical condition was such that it prompted the Tirana District Court to order the applicant's compulsory medical treatment on 8 April 2009, in accordance with a "procedure prescribed by law". No evidence has been adduced that could call into question the authorities' conclusions as to the applicant's dangerousness and the need for his confinement. The applicant's detention was therefore a measure covered by Article 5 § 1 (e) of the Convention, which is undisputed by the parties.

119. In order to ensure that the detention of the applicant – who is a "person of unsound mind" – has been "lawful", the Court, by having regard to its findings under Article 3, will assess the appropriateness of the institution in which the applicant has been detained, including whether the applicant's continued detention has had "a therapeutic purpose, aimed specifically, and in so far as possible, at curing or alleviating [his] mental-health condition, including, where appropriate, bringing about a reduction in or control over their dangerousness" (see *Rooman* [GC], cited above, § 208). For this purpose, the Court will "verify whether an individualised programme has been put in place, taking account of the specific details of the detainee's mental health with a view to preparing him or her for possible future reintegration into society" (see *Rooman* [GC], cited above, § 209).

120. In this connection, the Court notes that, since 20 June 2011 the applicant, who was exempted from criminal responsibility, has been detained at the Prison Hospital which is a penal facility and not part of the integrated health system. Of concern is the fact that since 2000 the CPT has repeatedly criticised the placement of "persons of unsound mind" who were exempted from criminal responsibility in penal facilities. Throughout its reports, in particular in its 2018 and 2019 reports, the CPT has considered that the Prison Hospital was not an appropriate institution for the detention of mentally ill individuals who were subject to court-ordered compulsory medical treatment under Article 46 of the Criminal Code and had been exempted from criminal responsibility.

121. Furthermore, the Court cannot overlook the observations of the People's Advocate that the detention of mentally ill individuals who had been exempted from criminal responsibility in penal facilities was in breach of domestic law. Indeed, section 28 of the 2012 Mental Health Act states that such individuals – like the applicant – should be placed in a special medical institution which should be part of the integrated health system

instead of the penal system. Also, the Supreme Court made the same finding in its decision of 14 July 2014 (see paragraph 54 above). The longstanding failure of the Albanian authorities to set up such an institution, in apparent contravention of the domestic statutory obligations since 2012, is indicative of a structural problem that appears to remain unaddressed.

122. The Court also notes that the authorities failed to consider alternative means of placing the applicant outside of penal facilities, for example in a civilian mental health facility (see paragraph 51 above), as also proposed in the medical expert report of 27 March 2017 (see paragraph 40 above) and advocated in the Commissioner's report (see paragraph 82 above), with the aim of moving towards deinstitutionalisation. In their decisions, the domestic courts repeatedly limited themselves to finding that the applicant's family was not capable of offering conditions appropriate to his illness.

123. Moreover, the applicant's treatment chiefly relied on pharmacotherapy through the administration of psychotropic drugs. The Court is not convinced that the applicant has been offered the therapeutic environment appropriate for a person detained as having mental disorders. In this connection, the Court, noting that at the relevant time there was one psychiatrist for eighty-four psychiatric patients in the Prison Hospital, does not consider that the applicant has received appropriate psychiatric treatment. The CPT reports raise serious concerns about the "therapeutic abandonment" of mentally ill patients at, amongst other places, the Prison Hospital. The Court refers to its findings in paragraph 108 above according to which the Government have not provided a copy of an individualised treatment plan drawn up for the applicant, including the therapeutic care he has been receiving throughout his detention.

124. Accordingly, the Court considers that the applicant's continued deprivation of liberty was not lawful and was in breach of the requirements of Article 5 § 1 (e) of the Convention. Therefore the Court concludes that there has been a violation of Article 5 § 1 of the Convention.

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

125. The applicant complained that, having regard to his appeal pending before the Supreme Court since 11 January 2016, he had not been given the possibility of having the lawfulness of his detention reviewed speedily by a court. He relied on Article 5 § 4 of the Convention, which provides as follows:

Article 5

"...

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.

..."

126. The Government contested this complaint. They submitted that the applicant had started legal proceedings against his detention in September 2014 and had obtained a decision from the Tirana Court of Appeal on 22 December 2015 (see paragraph 25 above), which had been final and enforceable. The applicant's appeal to the Supreme Court was still pending. Therefore, the Government argued that the proceedings had been in line with the Convention requirements for a speedy review of the applicant's detention.

127. The Court reiterates that Article 5 § 4 of the Convention, in guaranteeing to detained individuals the right to institute proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and the ordering of its termination if it proves unlawful. The question of whether the right to a speedy decision has been respected must be determined in the light of the circumstances of each case and – as is the case for the "reasonable time" requirement in Articles 5 § 3 and 6 § 1 of the Convention – including the complexity of the proceedings, their conduct by the domestic authorities and by the applicant and what was at stake for the latter (see, amongst others, *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 251-52, 4 December 2018).

128. As regards the Government's submission that the Tirana Court of Appeal's decision of 22 December 2015 was final, the Court notes that this decision was open to appeal, a possibility which the applicant made use of, and it appears to be pending before the Supreme Court. In the light of its findings in *Gjyli v. Albania* (no. 32907/07, §§ 33-34, 29 September 2009) the Court finds that this decision has not become *res judicata* and it therefore rejects the Government's observations. While it is true that Article 5 § 4 guarantees no right, as such, to an appeal against decisions ordering or extending detention, it follows from the aim and purpose of this provision that its requirements must be respected by appeal courts if an appeal lies against a decision (see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 78, ECHR 2003-IV).

129. Nothing suggests that the applicant, having lodged his appeal with the Supreme Court on 11 January 2016, caused any delays in its examination. The Court considers that, in the absence of any reasons put forward by the Government, the delay of more than three years for this set

of proceedings before the Supreme Court is entirely attributable to the authorities. In these circumstances, the Court finds that the period before the Supreme Court cannot be considered compatible with the "speediness" requirement of Article 5 § 4, which requires particular expedition of the proceedings. There has accordingly been a violation of this article.

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

130. The applicant complained that he had not had an effective compensatory remedy in respect of his Article 5 complaints. He relied on Article 5 § 5 of the Convention, which provides as follows:

Article 5

> "5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

131. The Government argued that the applicant had failed to avail himself of the various remedies provided for under the domestic legislation.

132. The Court reiterates that Article 5 § 5 of the Convention is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to Article 5 §§ 1, 2, 3 or 4. The right to compensation set forth in Article 5 § 5 therefore presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Convention institutions (see *Stanev* [GC], cited above, § 182).

133. Turning to the present case, the Court notes that, regard being had to its findings of a violation of Article 5 §§ 1 and 4, paragraph 5 is applicable. The Court must ascertain whether Albanian law afforded or now affords the applicant an enforceable right to compensation for the breaches of Article 5 § 1 and 4 of the Convention in this case.

134. As regards the violation of Article 5 § 1, Article 268 of the CCP and the Compensation for Unjust Imprisonment Act provide for a person's right to compensation under specific instances. The latter does not appear to provide for compensation for unlawful detention of persons found in the specific situation of the applicant. It does not appear that such a right was secured under any other provision of the Albanian legislation and the Government have not submitted any domestic case-law to the contrary.

135. As regards the violation of Article 5 § 4, the Court observes that the Government did not point to domestic legal provisions providing for a right to compensation. The Court notes that in November 2017 a new remedy came into effect concerning an alleged breach of the reasonable time requirement, as defined in Article 6 § 1 of the Convention (see paragraph 52 above). Even though the new remedy became effective subsequent to the introduction of the application on 11 June 2016, the Court, having regard to the absence of any domestic case-law, cannot conclude that the new remedy

would apply to the "speediness" requirement under Article 5 § 4 of the Convention, in respect of which the applicant cannot be required to exhaust it. Therefore, it does not appear that a right to compensation is secured under the Albanian legislation.

136. The Court concludes that the applicant did not have an enforceable right to compensation, as required by Article 5 § 5 of the Convention, in respect of the violations of Articles 5 §§ 1 and 4. There has therefore been a breach of Article 5 § 5 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION

137. The applicant complained that there had been no effective remedy under domestic law for his complaints under Article 3 of the Convention. He relied on Article 13 of the Convention, which provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

138. The applicant argued that, although the domestic legislation formally provided him with the protection guaranteed by the Convention, in practice the domestic courts had failed to provide relief for his complaint under Article 3.

139. The Government submitted that the applicant had made use of the domestic remedies, by instituting seven sets of proceedings before the domestic courts.

140. The Court considers that, having regard to its findings under Article 3 the Convention, it is unnecessary to examine separately the complaint under Article 13 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 3 AND 5 OF THE CONVENTION

141. The applicant further complained that he had been discriminated against on the ground of his mental illness. He relied on Article 14 of the Convention, taken in conjunction with Article 3 and Article 5 § 1 of the Convention, which provides as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

142. The applicant claimed that the authorities' behaviour in his case had been discriminatory given that he had been placed for treatment in penal

institutions instead of a custodial clinic for psychiatric patients, as a result of which he had received inadequate medical treatment.

143. The Government submitted that the authorities had afforded the applicant the same treatment as that extended to other individuals in the same situation. All individuals who had been exempted from criminal responsibility and had been subject to a court-ordered medical treatment had been placed in the same institutions as the applicant. The Government also made reference to the Court's established case-law which provides that only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14.

144. The Court considers that, having regard to its findings under Articles 3 and 5 of the Convention, it is unnecessary to examine separately the complaint under Article 14 of the Convention.

VIII. APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION

145. Article 46 of the Convention provides as follows:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

146. Article 41 of the Convention provides as follows:

> "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. Article 46

147. The Court reiterates that findings of a violation in its judgments are essentially declaratory (see, amongst other authorities, *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, § 61, ECHR 2009, and *W.D. v. Belgium*, no. 73548/13, § 167, 6 September 2016). In accordance with Article 46 of the Convention, a finding of a violation imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (see, amongst others, *Broniowski v. Poland* [GC], no. 31443/96, § 192, ECHR 2004-V;

Dybeku, cited above, § 63; and *Sławomir Musiał v. Poland*, no. 28300/06, § 106, 20 January 2009).

148. The Court considers that the respondent State should expeditiously take the necessary measures of a general character in order to secure appropriate living conditions and the provision of adequate health care services to mentally ill persons who are subject to deprivation of liberty on the basis of a court-ordered compulsory medical treatment. The respondent State, subject to supervision by the Committee of Ministers, remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII).

149. The Court considers that the respondent State should create an "appropriate institution" by refurbishing existing facilities or building a new specialised facility for housing persons like the applicant with a view to improving their living conditions. Any such facility must comply with the therapeutic purpose of this form of deprivation of liberty, aimed at curing or alleviating the mental-health condition of the detainees, including, where appropriate, bringing about a reduction in or control over their dangerousness and facilitating their reintegration into society. Pharmacological treatment should be combined with other recognised forms of therapeutic treatment, as part of an individualised treatment plan in respect of each individual. For these purposes, the authorities should also ensure the recruitment of a sufficient number of qualified mental health care workers in such facilities. Furthermore, the authorities should consider, where appropriate, the possibility of outpatient mental health treatment.

150. Insofar as individual measures are concerned, the authorities should secure as a matter of urgency the administration of suitable and individualised forms of therapy to the applicant, and consider the possibility of his placement in an alternative setting outside of the penal facilities.

B. Article 41

1. Damage

151. The applicant claimed 48,666 euros (EUR) in respect of pecuniary damage and 15,000 euros (EUR) in respect of non-pecuniary damage. The applicant considered that the just satisfaction payable to him ought to be calculated on the basis of compensation for each day of detention as provided for in the Compensation for Unlawful Detention Act.

152. The Government contested the applicant's claims, arguing that they were unsubstantiated.

153. The Court considers that it has not been shown in the present case that there exists a causal link between the violations of Articles 3 and 5 of

the Convention and the pecuniary damage claimed by the applicant. It therefore rejects his claims under this head.

154. However, it finds that the applicant undoubtedly sustained damage of a non-pecuniary nature on account of his continued compulsory detention without appropriate treatment for his health condition, in violation of Articles 3 and 5 § 1 of the Convention. Making its assessment on an equitable basis, the Court awards him EUR 15,000 in respect of non-pecuniary damage.

2. Costs and expenses

155. The applicant claimed EUR 10,000 for the costs and expenses incurred before the domestic courts and for those incurred before the Court. He submitted a table of costs and expenses incurred by his representatives.

156. The Government submitted that these claims were exorbitant and unsubstantiated.

157. Having examined the documents in the case file, the Court notes that the applicant failed to provide a complete list of documents, such as invoices or contracts, in support of the aggregate amount of costs and expenses incurred in the domestic proceedings. However, the Court finds that, in view of the documents in the case file, the applicant must have incurred some costs and expenses in the proceedings before the national courts and this Court. Accordingly, in the present case, regard being had to the information in its possession, the Court considers it reasonable to award the applicant the sum of EUR 2,500.

3. Default interest

158. 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention and the inadequate medical treatment in the Prison Hospital;

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 on account of the Supreme Court's failure to examine speedily the applicant's appeal of 11 January 2016;

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

6. *Holds* that there is no need to examine the complaint under Article 13 of the Convention in conjunction with Article 3 of the Convention;

7. *Holds* that there is no need to examine the complaint under Article 14 of the Convention in conjunction with Articles 3 and 5 of the Convention;

8. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 21 January 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President