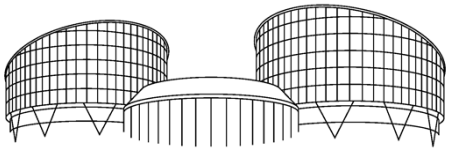

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KAGANOVSKYY v. UKRAINE

(Application no. 2809/18)

JUDGMENT

Art 3 (substantive) • Degrading treatment • Short period of confinement of person with mental disorder in residential institution's enhanced supervision unit, in shared room with personal space of 2.5 square metres and presence of other aggravating aspects, resulting in significant emotional stress and deterioration of mental health • Applicant's condition rendering him more vulnerable than average person deprived of liberty Art 5 § 1 • Unlawful deprivation of liberty through confinement in enhanced supervision unit Art 5 § 4 • Lack of legal procedure for applicant to take court proceedings reviewing lawfulness of confinement Art 5 § 5 • Right to compensation not ensured

STRASBOURG

15 September 2022

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

In the case of Kaganovskyy v. Ukraine,

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

Síofra O'Leary, *President,*
Mārtiņš Mits,
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Lətif Hüseynov,
Arnfinn Bårdsen,
Mattias Guyomar, *judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 2809/18) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Volodymyr Volodymyrovych Kaganovskyy ("the applicant"), on 4 January 2018;

the decision to give notice of the application to the Ukrainian Government ("the Government");

the parties' observations;

Having deliberated in private on 23 November 2021 and 1 February 2022,

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

INTRODUCTION

1. The present case concerns the applicant's complaints about his confinement in the "enhanced (intensive) supervision unit" of the Kyiv Psychoneurological Residential Institution in the period between 27 June and 6 July 2017 and about the physical conditions of that confinement. The main issues it raises are under Article 5 §§ 1, 4 and 5 (alleged unlawfulness of the applicant's confinement and impossibility for him to challenge its lawfulness and to receive compensation) and under Article 3 of the Convention (conditions of the confinement).

THE FACTS

2. The applicant was born in 1958. The applicant, who had been granted legal aid, was represented by Ms V. Lebid, Ms O. Protsenko and Mr M. Tarakhkalo, lawyers from the Ukrainian Helsinki Human Rights Union ("the UHHRU").

3. The Government were represented by their acting Agent, Ms O. Davydchuk, of the Ministry of Justice.

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

I. THE APPLICANT'S STAY IN THE KPRI AND HIS CONFINEMENT IN THE ENHANCED SUPERIVISION UNIT

5. On 11 September 2012 the Podilskyy District Court of Kyiv ("the Podilskyy Court") declared the applicant to be legally incapable. The court based its decision on the results of a forensic medical examination of 26 June 2012 which established that the applicant suffered from chronic paranoid schizophrenia.

6. On 28 August 2013 the Podilskyy Court assigned the applicant's father to act as his guardian.

7. On 6 August 2014 the applicant was admitted on a voluntary basis to the Kyiv Psychoneurological Residential Institution (*Київський психоневрологічний інтернат*, "the KPRI"), a State-run social care institution subordinated to the Kyiv City Department of Social Policy ("the Department").

8. According to the Department's and the KPRI's letters of 12 March and 13 May 2019, prepared at the Government's request, throughout the history of the applicant's mental disorder his condition worsened, as a result of which he lost his job, family and accommodation, and was repeatedly hospitalised in psychiatric hospitals. After leaving the hospitals he disregarded doctors' recommendations, failed to take the appropriate medication, and abused alcohol; he took out bank loans, spent them on game machines and failed to repay them. After he was admitted to the KPRI, he was periodically aggressive towards others, acted and spoke without clear reasoning, was not capable of fully comprehending his condition of health and considered that he was not ill.

9. According to the above-mentioned letters, the applicant could move freely both within and outside the KPRI during the time period set by the internal rules of conduct. He was permitted to leave the KPRI territory in order to see his relatives and acquaintances. From 2014 he visited a local rehabilitation centre on his own, and could visit external doctors and have contact with human rights organisations, in particular the UHHRU. The KPRI never prevented him from leaving its premises; moreover, it fully supported and encouraged him, with the aim of rehabilitation, in leading a social and multifaceted life.

10. On 15 May 2015 the Podilskyy Court assigned the applicant's brother, Mr K., to act as his new guardian.

11. On 19 June 2017 the UHHRU lawyer wrote to the director of the KPRI, informing him that, in accordance with the provisions of the Psychiatric Assistance Act, the applicant had called for legal advice from the UHHRU and had lodged a claim with the Podilskyy Court, seeking to restore his legal capacity (see paragraph 32 below). The lawyer asked the director to inform her whether the applicant would be present at the court hearing of 5 July 2017 and, if the answer was in the negative, to provide information

about the reasons for his absence. She attached a copy of the summons to the hearing and a copy of the Podilskyy Court's ruling opening the proceedings.

12. On 23 June 2017 Mr K. requested in writing that the KPRI prohibit the applicant from leaving the KPRI territory, allegedly because his health condition had worsened.

13. On 27 June 2017 the applicant was placed in the KPRI enhanced (intensive) supervision unit (*відділення посиленого (інтенсивного) нагляду*, "the unit"), which he himself referred to as an "isolation ward".

14. According to the applicant's medical records, on that day his condition "somewhat changed"; he was agitated, talkative and unproductive. At the entrance to the KPRI he took a parcel brought for his roommate, Mr S., and brought it into his room. He responded to the doctor in an irritated manner that he had acted at Mr S.'s request, even though he knew that the parcel should have been delivered by the KPRI staff. His thought processes were superficial and fast; he denied having hallucinations and did not demonstrate them in his behaviour; he refused to be hospitalised. The doctor's decision was to put him "under supervision" in the above-mentioned unit, which was referred to in the medical records as "*з/о*" (*закрытое отделение*, a closed unit).

15. According to the Department's subsequent letters of 12 March and 11 April 2019 and the KPRI's letter of 13 May 2019, the KPRI did not have "isolation wards" and did not apply measures of physical restraint to its residents. Instead, on 27 June 2017 the applicant was placed in the enhanced supervision unit, in which only residents whose condition had deteriorated, and those dangerous to themselves and to others, were placed. They received additional one-off medical interventions in the unit in order to prevent the aggravation of their diseases, to avoid their hospitalisation in a psychiatric hospital, and to protect them from damage inflicted on themselves or on others. The unit had round-the-clock uninterrupted supervision; there were visits every day by doctors for monitoring any changes in the residents' condition; and junior medical staff were always on duty and carried out the doctors' orders three times a day.

16. As regards the applicant, the above-mentioned letters stated that he had been placed in the unit because of the worsening of his mental disease; it had been decided to place him there solely for his own health and safety and for the protection of others, and in order to be able to react more effectively to attacks suffered by him, and to control his worsened condition. At that time the applicant was exhibiting uncontrolled and inadequate thought processes and actions; he had not expressed any criticism of his worsened condition; he had demonstrated significant logical-structural defects in his thought processes and had outwardly expressed irritation while defending his unreasonable actions. During his stay in the unit, his conduct and emotional condition had fluctuated; he had been ambivalent in his intentions; he had repeatedly altered his decision concerning the change in his guardian; his

mood had altered from anxious to subdepressive; and in conversations with a doctor he had asked for help.

17. As to the conditions in the unit, the letters further stated that the unit had consisted of two rooms of 10 and 15 square metres, in which up to six residents could be placed. The rooms had had beds, nightstands, wardrobes and separate sanitary units. There had been adequate light and regular ventilation in the unit. People staying in the unit were able to freely leave it for a walk, under the control of medical staff and according to a schedule; they were able to visit a canteen and a hairdresser without restrictions, and to take part in cultural events in the KPRI club under the control of the medical staff; they were able to visit a doctor if necessary; and they were free to use their mobile telephones, and to meet their relatives, guardians and acquaintances. At the material time there were doors with metal bars in the unit, which were intended to provide permanent and close supervision of the residents, but after repairs had taken place, they had been replaced with reinforced-plastic doors.

18. The applicant stated that although he had stayed at the KPRI voluntarily, he had never agreed and never wished to be placed in the above-mentioned unit. On 27 June 2017 a male nurse had come to him and said: "Pack your belongings to go to the closed [unit]". However, there had been no grounds for placing him there, since his condition had not worsened at that time, as he had not shown aggression or presented any danger to himself or to others; he had not been offered hospitalisation before placement in the unit; he had not received any additional treatment in the unit; he had not been under the doctor's regular supervision there and the nurses had come only in the mornings and evenings. Placement of the KPRI residents in the unit had been used as a punishment for their disobedience and various breaches. As for himself, he had been placed in the unit to prevent him from attending a court hearing scheduled for 5 July 2017 (see paragraph 35 below).

19. According to the applicant, between 27 and 30 June 2017 he stayed in the unit from 7 a.m. till 9 p.m.; he was allowed to leave it during the night in order to sleep in his room in the residential block which, according to him, was because of overcrowding in the unit on those days; after 30 June 2017 he stayed in the unit permanently. He shared the room of 15 square metres with five other residents; there was also a nurse's room, a dining room, a corridor and a toilet in the unit. Two of the entrances to the unit had metal bars. Patients were unable to leave unless the door had been opened by the KPRI staff. Around twenty patients resided in the unit; some of them smoked, so that there was no fresh air, given also that the windows in his room could not be opened. The residents were not allowed to walk outside; they could visit the locked toilet only with the nurse's permission; there was no access to drinking water and some residents had to use water from the toilet bowl. The residents were allowed to take a shower in another building only when they started having an unpleasant smell. Food was brought from the canteen; on several occasions other residents ate his food.

20. According to an entry made in the applicant's medical records on 30 June 2017, on that day the applicant's father came to see him and they walked around the KPRI territory, after which they went to see the doctor, and showed the doctor the applicant's request to the Podilskyy Court for the discontinuation of the proceedings, which he had instituted to restore his legal capacity, and the cancellation of a hearing scheduled for 5 July 2017 (see paragraph 35 below), on the grounds that his health condition had not improved and the restoration of his legal capacity would be premature. The applicant explained to the doctor that he did not want the above-mentioned proceedings to be continued because that would worsen his relationship with his father and brother. He was in a low mood, but otherwise there were "no changes".

21. On 5 July 2017 the lawyer from the UHHRU and a journalist visited the KPRI in order to check whether the applicant was well, as he had not appeared at the court hearing scheduled for the same day (see paragraph 35 below) and his mobile telephone was switched off. After they had called the police and the police had arrived, the KPRI eventually allowed the lawyer to talk to the applicant in one of the rooms at the KPRI and in the presence of a psychiatrist. Following that, and before leaving the KPRI, the lawyer decided to come back, entered the premises in which the unit was located and took a photo of the applicant standing in the unit, together with some other patients, behind the entrance door with metal bars. According to the entry made in the applicant's medical records on that day, his condition worsened after that visit: his mood was spoiled, he became irritated, his speed of thinking changed from slowing down to accelerating. He had tried to explain to the lawyer that he did not want to spoil his relationship with his brother and father, to which the lawyer replied that they would find him a new and better guardian. The applicant's irritation increased. It was not possible to protect him from communication with the lawyer even after the arrival of the police. The conclusion in the entry in the medical records was that the applicant should remain under supervision and his condition should be controlled. According to the applicant, his condition worsened not because of the lawyer's visit but because of his placement in the unit and because his doctor shouted at him.

22. On 6 July 2017 the applicant was moved back to his room in the residential block. An entry made in his medical records on that day stated that there was no significant change in his condition; he had complained of a bad mood, which he related to the fact that his brother wanted to refuse to be his guardian, and the applicant had "begged" the doctor to persuade his brother not to refuse to act as his guardian; he had had no delusions or hallucinations, and he had not expressed any criticism of his condition; it was decided to continue his supervision in the residential unit. According to the Department's and the KPRI's letters of 11 April and 13 May 2019, the applicant was moved back to his room because his condition had

"significantly" improved and stabilised, and also in order to prevent any aggravation of the conflict with the UHHRU representatives.

23. On 31 July 2017 the UHHRU lawyer submitted a "report of a crime" to the police on account of the applicant's placement in the "isolation ward", stating that there had been no medical or legal grounds for his confinement. The police forwarded the information to the Department for it "to give a professional and legal assessment" of the actions of the KPRI staff in respect of the allegations made by the lawyer.

24. On 28 September 2017 the UHHRU lawyer wrote to the director of the Department, informing him that the police had directed her "report of a crime" to the Department and had asked the director to send her his reply in respect of the facts set out in the report, and to inform her about the measures taken in that regard. She attached a letter from the police and a copy of the "report of a crime". On 3 November 2017 the Department wrote to the UHHRU lawyer advising her to raise the issue before the police.

25. On 7 October 2017 Mr K. wrote to the director of the KPRI asking him to forbid the applicant from meeting other people, including UHHRU lawyers, without Mr K. being present. He further asked the director to forbid the applicant from leaving the KPRI territory by himself or with other people.

26. On 9 October 2017 the KPRI informed the Department that the conclusions reached by the UHHRU lawyer about the alleged breaches of the applicant's rights had been based exclusively on his words, even though he had been declared legally incapable. The applicant had been placed not in the "isolation ward", but in the enhanced supervision unit, on account of the worsening of his condition.

27. On 13 October 2017 the UHHRU lawyer sent the "report of a crime" to the police by post.

28. On 30 October 2017 the UHHRU lawyer complained to the court about the police's failure to enter the information in the Unified Register of Pre-Trial Investigations ("the Register").

29. On 29 November 2017 the Obolonskyy District Court of Kyiv ordered the police to enter the information reported by the lawyer in the Register. The UHHRU lawyer attended that hearing.

30. Eventually, on 26 February 2019 the police entered the information in the Register. The parties did not inform the Court about the outcome of the investigation.

31. On 3 March 2021 the applicant's representatives informed the Court that they had learned from the KPRI administration in January 2021 that the applicant had died on 25 December 2019.

II. PROCEEDINGS FOR THE RESTORATION OF THE APPLICANT'S LEGAL CAPACITY

32. In December 2016 the applicant asked his guardian and the guardianship authorities to arrange a fresh psychiatric examination or to lodge

a request with the court for the restoration of his legal capacity, on the grounds that his condition had improved. He received no reply from them as, according to him, his guardian was always opposed to the restoration of his legal capacity. On 2 February 2017, with the assistance of lawyers from the UHHRU, the applicant personally sent such a request to the Podilskyy Court.

33. On 27 February 2017 the court returned the above-mentioned request unexamined, on the ground that the domestic law did not allow a legally incapable person to request a restoration of his or her legal capacity.

34. On 12 April 2017, upon an appeal by the applicant, the Kyiv City Court of Appeal ("the Court of Appeal") quashed the above ruling and remitted the case for fresh examination to the Podilskyy Court.

35. By a letter of 27 April 2017, the Podilskyy Court summoned the applicant to a hearing scheduled for 5 July 2017.

36. On 5 July 2017 the Podilskyy Court returned the applicant's request of 2 February 2017 unexamined, following his request of 30 June 2017 (see paragraph 20 above). At the hearing, Mr K. supported the applicant's request for the discontinuation of the proceedings. The applicant did not attend that hearing.

37. On 18 December 2017 the applicant wrote a letter to the Court of Appeal, appealing in substance against the ruling of 5 July 2017.

38. On an unspecified date Mr K. submitted a withdrawal from the above appeal to the Court of Appeal.

39. On 21 December 2017 the Court of Appeal discontinued the proceedings on the basis of that withdrawal.

40. On 15 August 2018, upon a cassation appeal by the applicant, the Supreme Court quashed the above ruling and remitted the case to the Court of Appeal for fresh examination.

41. On 20 September 2018 the Court of Appeal quashed the ruling of 5 July 2017 and remitted the case to the Podilskyy Court for fresh examination. On 17 January and 28 May 2019, respectively, the latter court opened the proceedings and ordered a new psychiatric examination of the applicant. The UHHRU lawyers attended the above-mentioned hearings of 20 September 2018 and 28 May 2019. The parties did not inform the Court about the outcome of those proceedings.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW AND PRACTICE

A. Civil Code (2003)

42. Article 16 provides that any person is entitled to apply to a court for the protection of his or her non-property or property rights and interests. One of the remedies available in this regard is termination of an action breaching the relevant right.

43. Article 23 provides that a person has the right to compensation for non-pecuniary damage suffered as a result of a breach of his or her right.

44. Article 1167 provides that non-pecuniary damage caused to a physical or legal person by unlawful decisions, acts or omissions must be compensated by a person who caused the damage in the case of his or her guilt. The provision also specifies certain situations in which damage may be compensated irrespective of the guilt of the relevant authority or person, in particular unlawful criminal prosecution and unlawful application of a preventive measure.

B. Code of Civil Procedure (2005)

45. Article 121 § 3 (2) provided at the material time that the court had to return a claim unexamined if it had been lodged by a legally incapable person.

46. Following the amendments introduced on 15 December 2017, the Code no longer contains the above-mentioned provision. Instead, Article 47 provides that persons with limited legal capacity can exercise their civil procedural rights in person and carry out their obligations in the courts in cases arising from relationships in which they personally participate, unless otherwise provided for by law.

C. Psychiatric Assistance Act (2000)

47. The Act mainly regulates the provision of medical assistance in psychiatric healthcare facilities, including involuntary hospitalisation of persons with mental disorders. However, it also contains several provisions concerning psychoneurological social care institutions. Section 23 regulates the procedure for admission of persons with mental disorders to such institutions and section 24 regulates transfer and discharge from them. The grounds for admission to the psychoneurological social care institutions are an application from a person with a mental disorder or from his/her guardian and a report by a medical commission, including a psychiatrist. The grounds for discharge from such institutions are (i) an application from the resident and a report by a commission of psychiatrists confirming the ability of that person to live independently; (ii) an application from his/her guardian; or (iii) a court decision finding the placement of a person in such an institution to be unlawful.

D. The 2016 Rules

48. On 24 March 2016 the Ministry of Healthcare adopted the Rules on the Application of Physical Restraint and/or Isolation during the Provision of Psychiatric Assistance to Persons Suffering from Mental Disorders ("the 2016 Rules").

49. Rule 1 provides that physical restraint and/or isolation of an individual under in-patient treatment may be applied in State or public healthcare facilities.

50. Rule 3 states that isolation constitutes the separation from surrounding persons of individuals presenting an immediate danger to themselves or others, with the purpose of preventing them from committing a socially dangerous act or in order to provide medical assistance.

51. Rule 4 provides that during isolation a person should be under the permanent supervision of medical personnel and a psychiatrist. Under Rules 5 and 7, the fact of, and justification for, isolation must be recorded in the medical documentation.

52. Under Rule 8, a single period of isolation cannot exceed eight hours. To prolong it, a fresh decision by at least two psychiatrists is required. Every two hours a psychiatrist must evaluate changes in the mental and physical condition of the patient and record them in the medical documentation. Isolation cannot be applied during the night. Isolation must be terminated once the condition of a person improves to the point where he or she does not pose a danger to himself or herself or to others.

53. Rule 9 states that an isolation ward should measure at least 7 square metres and should have windows large enough to allow natural light and fresh air to enter.

E. The 2016 Model regulations

54. The Model regulations on psychoneurological residential institutions were adopted by the Cabinet of Ministers on 14 December 2016. They deal with such issues as the tasks and activities of psychoneurological residential institutions, conditions of admission, transfer and departure from those institutions, indications and contraindications for referring a person to the institution, conditions of residence in them, and so on.

55. Regulation 1 provides that a psychoneurological residential institution is an in-patient social care institution which is established for a temporary or permanent residence (stay) of persons having persistent intellectual and/or mental disorders, requiring external assistance, social services, medical care and a combination of rehabilitation measures, and having no contraindications against staying in such institutions.

56. Regulation 4 provides that each residential institution is to develop its own regulations on the basis of the Model regulations.

57. Regulation 34 provides that residential institutions may have intensive supervision units (rooms) for residents who have serious somatic and neurological disorders or a serious degree of dementia, who are suffering from spatial and temporal disorientation, and who are not capable of caring for themselves, or having the simplest working skills or the skills of communicating with other persons, and who require full medical and

everyday care. A bed regime is provided for those who are not able to walk, and a supervisory regime is provided for others.

58. Regulation 36 provides that a transfer of residents to another unit (room) and a change in the supervision regime must be carried out for objective reasons in accordance with a doctor's recommendation and the resident's consent, and taking into account his or her health condition, with the relevant information being indicated in the medical documentation.

F. The KPRI Regulations

59. The Government did not provide the KPRI Regulations as requested by the Court. Instead, they referred to the Department's letters of 12 March and 11 April 2019, which in turn referred to some of the provisions of the KPRI Regulations adopted on an unspecified day.

60. According to the above-mentioned letter, Regulation 1.1 provides that the KPRI is an in-patient social-medical facility designated for the permanent residence of persons with psychoneurological diseases requiring outside assistance, everyday services and medical care.

61. Regulations 1.3 and 1.4 provide that the KPRI is subordinate to the Department and is guided by the Constitution of Ukraine, statutes and other legal documents regulating the activities of residential institutions, decrees of the Ministry of Labour and Social Policy, and the Regulations in question.

62. The letter of 12 March 2019 also stated that under the Regulations the KPRI had not constituted a healthcare institution, had not been subordinate to the Ministry of Healthcare and had not provided in-patient medical treatment.

G. The 2018 Decree

63. On 16 May 2018 the Ministry of Healthcare adopted Decree no. 933 ("the 2018 Decree") amending a list of healthcare institutions, which was adopted in turn by the same ministry on 12 November 2002. The amendments added social care institutions into the above-mentioned list, which permitted the application in social care institutions of relevant legal measures regulating medical treatment in healthcare institutions, in particular the 2016 Rules.

H. Judicial practice

64. The Government referred to a domestic civil case, in which a person with limited legal capacity, who was a resident of a psychoneurological residential institution, lodged a claim against that institution, challenging its refusal to allow him to go on leave on the grounds that he did not take the relevant medication and breached the regime. By a judgment of 10 August 2018, the Melitopol District Court allowed the claim, finding that the institution had breached the claimant's freedom of movement guaranteed by

the Constitution. Referring to Articles 23 and 1167 of the Civil Code (see paragraphs 43 and 44 above), the court awarded the claimant compensation for non-pecuniary damage suffered as a result of the breach.

THE LAW

I. *LOCUS STANDI* OF THE UHHRU

A. The parties' submissions

65. The Government contended that the UHHRU had no *locus standi* to pursue the application, as the rights under Articles 3 and 5 of the Convention were non-transferable. Alternatively, they submitted that in the present case the applicant had a brother who was his guardian, who had not expressed his wish to pursue the application. The Government also contended that cases concerning the placement of mentally ill persons in an institution had already been the subject of the Court's well-established case-law, thus suggesting that the present case did not warrant its continued examination.

66. The UHHRU submitted that, after it had been informed of the applicant's death, it had sent a letter to his brother and guardian, Mr K., asking him whether he wished to pursue the application on the applicant's behalf. Mr K. had received the letter but had not replied or otherwise expressed his wish to pursue the application. The UHHRU also noted that the applicant had not been married and had not had children, and it was not aware of any other relatives he might have had who would wish to pursue his application. It thus expressed its own wish to pursue the present case. In particular, the UHHRU submitted that it had established a strong link with the applicant, because its lawyers had represented him for four years at the domestic level and in the proceedings before the Court. The UHHRU also submitted that the present case concerned a unique legal issue not covered by the Court's case-law and was of the general interest, as the Court had never had an occasion to examine the issue of confinement in Ukrainian psychoneurological residential institutions or the conditions of such confinement.

B. The Court's assessment

67. In reply to the Government's contention that the UHHRU has no *locus standi* to pursue the application, the Court reiterates that it has struck out applications where the applicant died in the course of the proceedings and no heir or close relative expressed a wish to pursue the application (see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 57, ECHR 2012 with further references). A person wishing to pursue an application has to provide evidence either of his or her status as an heir or close relative of the applicant, or of any legitimate interest (see *Léger v. France* (striking out) [GC], no. 19324/02, § 43, 30 March 2009).

68. In the present case, the applicant died in the course of the proceedings and no relative wished to pursue this application. It was only the UHHRU who expressed the wish to do so (see paragraphs 65 and 66 above). However, the Court considers that it is not necessary to examine that organisation's *locus standi* in the proceeding before it as it finds, for the reasons set out below, that in any event the continuation of the examination of the case following the applicant's death is justified.

69. The Court reiterates that the human rights cases before it generally also have a moral dimension, which must be taken into account when considering whether the examination of an application after the applicant's death should be continued. This is all the more so if the main issue raised by the case transcends the person and the interests of the applicant (see *Karner v. Austria*, no. 40016/98, § 25, ECHR 2003-IX).

70. The Court has repeatedly stated that its "judgments in fact serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties" (see *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, 5 July 2016).

71. The present case raises a question of a serious nature, which concerns issues under Articles 3 and 5 of the Convention about the conditions of confinement at a psychoneurological residential institution and lawfulness of that confinement. This issue transcends the present application and involves a question of general interest given the fact that the relevant domestic law has not been changed, and given the vulnerability of persons residing in such institutions. The continuation of the examination of the present case presents an opportunity to clarify the Conventional standards of protection in relation to such persons.

72. In these circumstances, the Court finds that the respect for human rights, as defined in the Convention and the Protocols thereto, requires it to continue the examination of the application in accordance with Article 37 § 1 *in fine* of the Convention.

II. SCOPE OF THE CASE

73. After the communication of the case the applicant raised a new complaint, relying on Article 5 of the Convention, alleging that in the period between April 2017 and June 2018 his freedom of movement beyond the KPRI territory had been restricted following Mr K.'s requests to the KPRI in his capacity as a guardian.

74. In the Court's view, the applicant's new complaint is not an elaboration of his original complaints to the Court on which the parties have commented. The Court considers, therefore, that it is not appropriate to take these matters up in the context of the present case (see *Piryanik v. Ukraine*,

no. 75788/01, § 20, 19 April 2005). It also notes that, after the communication of the present case, the applicant lodged a separate application in this respect.

III. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

75. Relying on Article 5 §§ 1, 4 and 5 of the Convention, the applicant complained that his confinement between 27 June and 6 July 2017 had been unlawful and unjustified and that he had not had the right under domestic law to challenge its lawfulness and to receive compensation. The above-mentioned provision reads, in so far as relevant, as follows:

Article 5

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

...

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

...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

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

A. Admissibility

1. Applicability of Article 5 § 1

(a) Preliminary remarks

76. The Court will first establish whether the applicant's confinement in the KPRI unit between 27 June and 6 July 2017 constituted a modification of the conditions of an already existing "lawful detention" at the KPRI (if any) thus falling outside the scope of Article 5 § 1 of the Convention and falling instead under Article 3 (see *Bollan v. the United Kingdom* (dec.), no. 42117/98, ECHR 2000-V, and *Stoyan Krastev v. Bulgaria*, no. 1009/12, § 38, 6 October 2020) or, if the applicant was not "lawfully detained" at the KPRI, whether the above-mentioned confinement in itself constituted a "deprivation of liberty" falling under Article 5 § 1.

(b) The parties' submissions

(i) The Government

77. The Government submitted that the applicant had been able to freely move around the KPRI territory. With reference to the information contained in paragraph 9 above, they further submitted that he had been allowed to

freely leave the KPRI territory. As to his placement in the unit, the Government referred to the information stated in paragraphs 16 and 17 above. They thus concluded that both the applicant's stay at the KPRI and his placement in the unit had not been a "deprivation of liberty" within the meaning of Article 5 § 1 and that that provision was not therefore applicable in his case. Furthermore, since the applicant had not been "deprived of liberty" at the KPRI, his confinement in the unit had not been an aspect of an already existing detention falling to be examined under Article 3.

(ii) The applicant

78. The applicant submitted that his detention at the KPRI had not been lawful. The domestic law did not provide for compulsory care at psychoneurological residential institutions (which was provided in psychiatric hospitals instead) and a person with a mental disorder could not be placed in such institutions compulsorily. However, between April 2017 and June 2018 Mr K. had several times unlawfully asked the KPRI to prohibit the applicant from leaving the KPRI territory. The applicant's confinement in the unit between 27 June and 6 July 2017 had not therefore been part of an already existing lawful detention.

79. As to the confinement itself, the applicant noted that the unit had been separated from the rest of the residential building by a door with metal bars, which could be opened only from the outside. At the time the applicant was in the unit, patients had had no outside contact or outside walks and had eaten in the unit. Although between 27 and 30 June 2017 he had slept in his room in the residential block, which had been because of the overcrowding in the unit, thereafter he had been locked in the unit all the time. He had been able to leave the unit for a short period of time only on 30 June 2017, when his father had come to make him drop the case concerning the restoration of his legal capacity, and on 5 July 2017, when he had been able to talk to his lawyer after the police had arrived. His confinement in the unit had therefore fallen within the ambit of Article 5 § 1.

(c) The Court's assessment

(i) Status of the applicant's stay at the KPRI

80. The Court notes that, as appears from the parties' submissions, the applicant was not "detained" at the KPRI from the point of view of the domestic law. Nor did the applicant, represented by three lawyers, complain that his admission to, and stay at the KPRI had constituted a "deprivation of liberty" (contrast *Stanev v. Bulgaria* [GC], no. 36760/06, §§ 96, 101-07 and 133-35, ECHR 2012). On the contrary, he submitted that his stay at the KPRI had been voluntary (see paragraph 18 above).

81. Furthermore, it remained undisputed that the applicant was at no point confined to the KPRI on the basis of a lawful order. Therefore, at all events, his confinement in the enhanced supervision unit between 27 June and 6 July

2017 cannot be viewed as a modification of the conditions of an already existing lawful detention (contrast *Bollan*, and *Stoyan Krastev*, §§ 40-54, both cited above).

(ii) Status of the applicant's confinement in the unit

82. The Court will next establish whether the applicant's confinement in the KPRI unit between 27 June and 6 July 2017 in itself constituted a "deprivation of liberty" so as to fall within the ambit of Article 5 § 1 of the Convention.

83. In order to determine whether there has been a "deprivation of liberty", account must be taken of a whole range of factors arising in a particular case. The above notion comprises an objective element, namely a person's confinement in a restricted space for a significant length of time, and a subjective element, namely the person's lack of valid consent to the confinement (see *Storck v. Germany*, no. 61603/00, §§ 71 and 74, ECHR 2005-V, 16 June 2005, and *M. v. Ukraine*, no. 2452/04, § 69, 19 April 2012).

84. As regards the objective element, the Court notes the applicant's specific submissions (see paragraphs 18 and 79 above), not challenged as such by the Government, that he remained in the KPRI unit for ten days, during which he was not able to leave it, with the exception of the period between 27 and 30 June 2017, when he was allowed to leave the unit in order to sleep in his room in the residential block, because of the overcrowding in the unit. The applicant was also able to briefly leave the unit on 30 June and 5 July 2017, to talk to his father and his lawyer, respectively. Otherwise, he remained for the whole time in the unit, which was locked from outside and could be opened by the KPRI staff only; he was not free to leave it, including to go for a walk; and his contact with the outside world was seriously restricted (see, *mutatis mutandis*, *Akopyan v. Ukraine*, no. 12317/06, § 68, 5 June 2014, and *I.N. v. Ukraine*, no. 28472/08, § 72, 23 June 2016). The photo of the applicant standing behind the unit's entrance door with metal bars suggests that he was not free to leave the unit (see paragraph 21 above). Although the Government considered that the applicant's placement in the unit had not been a "deprivation of liberty" within the meaning of Article 5 § 1 of the Convention and referred in this connection to the information contained in the Department's and the KPRI's letters (which stated that people staying in the unit had been able to freely leave it for a walk under the control of medical staff and according to a schedule, and to engage in some other activities; see paragraph 17 above), the Court notes that the above letters were of general nature, did not address the applicant's specific allegations about his own confinement in the unit and, moreover, were prepared almost two years after the applicant's confinement. In addition, the Court cannot overlook the fact that the unit itself was referred to in the medical records as a "closed" one (see paragraph 14 above), which implied a reference to a restricted space and lack of freedom to leave it. Having regard to all the

material in the case and the parties' submissions, the Court accepts the applicant's description of the modalities of his confinement in the unit.

85. As to the subjective element, the Court notes that it appears to be common ground between the parties that the applicant's placement in the unit was against his will. Indeed, there is nothing to suggest that he could have freely decided not to go with the male nurse to the unit when the nurse came to him and told him to go there (see paragraph 18 above) or that, once there, he could have freely left it at any time (see, *mutatis mutandis*, *Aftanache v. Romania*, no. 999/19, § 81, 26 May 2020).

86. The Court further notes that the KPRI is a State-run institution and considers that the situation complained of engaged the responsibility of the respondent State under the Convention (see *Glass v. the United Kingdom*, no. 61827/00, § 71, ECHR 2004-II; *Shtukaturov v. Russia*, no. 44009/05, § 110, ECHR 2008; and *Akopyan*, cited above, § 69).

87. In view of the above, the Court concludes that the applicant's confinement in the unit amounted to a "deprivation of liberty" falling within the ambit of Article 5 § 1 of the Convention. The above provision is therefore applicable in the present case.

2. Otherwise as to the admissibility

88. The Government did not raise any other admissibility objection. The Court notes that the applicant's complaints under Article 5 of the Convention are neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Alleged violation of Article 5 § 1

(a) The parties' submissions

(i) The Government

89. The Government argued, with reference to the information contained in paragraph 16 above, that the fundamental reason for the applicant's placement in the unit had been an aggravation of his mental condition. Recalling that the applicant had had a history of mental health issues (see paragraph 8 above), they considered that he had been reliably shown to have been suffering from a mental disorder of a kind and degree warranting his confinement, and the conditions as defined in *Winterwerp v. the Netherlands* (24 October 1979, Series A no. 33) had thus been met. In the circumstances the applicant's confinement had been necessary and no alternative measures had been appropriate. However, since on 6 July 2017 his condition had improved, he had been discharged to his room in the residential block.

(ii) The applicant

90. As to legal grounds of his confinement, the applicant submitted that the confinement had been in breach of the 2016 Rules (see paragraphs 48-53 above). Although in 2017 social care institutions had not yet been included in the list of healthcare institutions which were subject to the 2016 Rules, they had been applicable to the KPRI by analogy, as the KPRI had in essence been a psychiatric healthcare facility. Assuming the Rules had not yet been applicable in the applicant's situation, his confinement had then breached Regulation 34 of the Model regulations (see paragraph 57 above), as it had not appeared from his medical records that on 27 June 2017 he had been in a condition described in that regulation. The applicant further submitted that if the 2016 Rules had not been applicable to the KPRI in 2017, that meant that in 2017 there had been no legal provisions governing the placement of KPRI residents in the unit.

91. As to the medical justification for his confinement, the medical entry made on 27 June 2017 (see paragraph 14 above) had proved that on that day the applicant had not been in a condition requiring confinement. His confinement had not pursued the aim of the protection of himself or others as he had not been aggressive or dangerous, and he had been confined in the unit with others. Although the letters of 12 March and 11 April 2019 had referred to a worsening of his condition and to other alleged irregularities in his actions and thought processes (see paragraph 16 above), the above-mentioned medical entry had not contained such information. Furthermore, his medical records from 27 June to 6 July 2017 had not demonstrated that he had been in an acute condition or violent, or that he had posed any danger to himself or to others. He had received no treatment in the unit and had not even once been seen by a doctor. Lastly, when he had been discharged from the unit, the medical entry had stated that his condition had been "without significant changes", which had rebutted the allegation that he had been discharged because of an improvement in his condition (see paragraph 22 above), and had proved that in the period under review his condition had not prevented him from staying in his room in the residential block.

92. The applicant had not been told about his diagnostic assessment; the purpose, method, likely duration and expected benefit of his confinement; alternative (less intrusive) methods of treatment; or possible pain, discomfort, risks and side effects of the confinement. There had been no therapeutic effect from placing him in a closed space with twenty other persons without outdoor walks, fresh air, activities, rehabilitation or medical treatment.

93. There had been no justification for the applicant's confinement for ten days. His medical records had contained no information about the evolution of his condition on 28 and 29 June and on 1-4 July 2017, whereas the records of 30 June, 5 and 6 July 2017 had contained very scarce information. All decisions had been made by one psychiatrist and the applicant had not had an opportunity to benefit from a second, independent medical opinion.

94. There were therefore no legal grounds for the applicant's confinement and it was unjustified and disproportionate. The confinement had pursued other goals, in particular to prevent him from meeting his lawyers and attending the court hearing on 5 July 2017 and, more generally, to make him drop the case concerning the restoration of his legal capacity.

(b) The Court's assessment

(i) General principles

95. To comply with Article 5 § 1, detention of an individual suffering from a mental disorder must first of all be "lawful", including the observance of a procedure prescribed by law; in this respect the Convention refers back to national law and lays down the obligation to conform to the substantive and procedural rules thereof (see *Herczegfalvy v. Austria*, 24 September 1992, § 63, Series A no. 244, and *I.N.*, cited above, § 66). The national law must also meet the standard of "lawfulness" set by the Convention, which requires that the conditions for the deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application (see, for example, *Kawka v. Poland*, no. 25874/94, § 49, 9 January 2001, and *Aftanache*, cited above, § 90). Moreover, Article 5 § 1 requires the existence in domestic law of "fair and proper procedures" and adequate legal protection against the arbitrary deprivation of liberty (see *Winterwerp*, cited above, § 45; *H.L. v. the United Kingdom*, no. 45508/99, § 115, ECHR 2004-IX; and *Akopyan*, cited above, § 70).

96. Furthermore, detention of an individual is such a serious measure that it is only justified where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained. The deprivation of liberty must therefore not only be in conformity with national law, but also necessary in the particular circumstances (see *Witold Litwa v. Poland*, no. 26629/95, § 78, ECHR 2000-III; *Stanev*, cited above, § 143; and *Anatoliy Rudenko v. Ukraine*, no. 50264/08, § 103, 17 April 2014).

97. As regards the deprivation of liberty of "persons of unsound mind", it must be in conformity with the purpose of Article 5 § 1, which is to prevent persons from being deprived of their liberty in an arbitrary fashion, and with the aim of the restriction contained in Article 5 § 1 (e) (see *Zaichenko v. Ukraine (no. 2)*, no. 45797/09, § 96, 26 February 2015). In particular, an individual cannot be deprived of liberty as being of "unsound mind" unless the following three minimum conditions are satisfied: he must reliably be shown to be of unsound mind; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement must depend upon the persistence of such a disorder (see *Winterwerp*, § 39; *Stanev*, § 145; *Shtukaturov*, § 114; and *I.N.*, § 70, all cited above).

(ii) Application of the above principles in the present case

98. The applicant, who was declared legally incapable following the establishment of his chronic mental disorder by forensic examination, and who had resided voluntarily at the KPRI since 2014, was confined in the KPRI unit from 27 June till 6 July 2017 following the KPRI psychiatrist's decision. The Court will first establish whether that confinement was "lawful" within the meaning of Article 5 § 1 and whether a procedure prescribed by law, if any, was observed in the present case (see *L.M. v. Latvia*, no. 26000/02, § 45, 19 July 2011).

99. In this connection, the Court first notes that the applicant argued that his confinement in the unit should have been governed by the 2016 Rules. However, the Government have not confirmed this and, moreover, the Court does not have the benefit of the domestic courts' assessment of the issues relating to the application of domestic law to the facts of the case, given that there were no domestic proceedings on the merits. Without such assessment, and taking further into consideration that it was only on 16 May 2018 that the Ministry of Healthcare included social care institutions in the list of "healthcare facilities", with the practical effect being that such institutions also became subject to the 2016 Rules (see paragraph 63 above), the Court cannot speculate as to whether the applicant's confinement in the KPRI unit in 2017 was formally governed by the 2016 Rules, including by analogy of law (see, *mutatis mutandis*, *Palchik v. Ukraine*, no. 16980/06, § 62, 2 March 2017).

100. The Court further notes that the only legal sources governing the applicant's confinement in the unit were, apparently, the 2016 Model regulations and the KPRI Regulations. The Government did not refer to any other legal basis in this regard and, in particular, explain the possible applicability of the Psychiatric Assistance Act and its relationship with relevant regulations. However, as regards the KPRI Regulations, the Court notes that the Government did not provide a copy of those regulations as requested when the case was communicated. The Court cannot therefore examine them as a possible legal basis for the applicant's confinement.

101. As regards the Model regulations, the Court notes that they provide for "intensive supervision units (rooms)" in psychoneurological residential institutions. Regulation 34 provides that such units (rooms) are designated for residents with serious somatic and neurological disorders or a serious degree of dementia, who are suffering from spatial and temporal disorientation, and who are incapable of caring for themselves, or having the simplest working skills or skills of communicating with other persons, and who require full medical and everyday care (see paragraph 57 above).

102. Furthermore, Regulation 36 provides that the supervision regime must be changed for objective reasons in accordance with a doctor's recommendation and the resident's consent, and taking into account his or her health condition, with the relevant information being indicated in medical

documentation (see paragraph 58 above). However, the applicant's medical records do not contain any information about "objective reasons" for his confinement, his consent to being placed in the unit or that it was required by his health condition.

103. The Court further notes that, apart from the above two provisions, the Model regulations do not contain any other provisions which provide for further details or safeguards in respect of the placement of a person in such units (rooms), or in respect of the regime, conditions, possible duration, prolongation and termination of that placement. It concludes therefore that the applicant did not have the benefit of "fair and proper procedures" for his confinement in the KPRI unit. Moreover, even the two provisions of the Model regulations referred to above do not appear to have been complied with in the present case. Accordingly, the applicant's confinement was not "lawful" within the meaning of Article 5 § 1.

104. Accordingly, the respondent Government has not demonstrated that the applicant's confinement was lawful within the meaning of Article 5 § 1. The Court thus has no choice but to conclude that there has been a violation of Article 5 § 1 of the Convention.

2. Alleged violation of Article 5 § 4

(a) The parties' submissions

105. The Government submitted that the applicant had had an opportunity to challenge the lawfulness of his confinement in court under Article 16 of the Civil Code (see paragraph 42 above).

106. The applicant submitted that as a legally incapable person he had been unable under domestic law at the relevant time to seek a judicial review of the lawfulness of his confinement. He had not been able to lodge a claim against the KPRI; only his guardian had been entitled to do so on his behalf. However, Mr K. had not supported his efforts to protect his rights before the courts.

(b) The Court's assessment

107. Article 5 § 4 of the Convention entitles detained persons to institute court proceedings for a review of the lawfulness of their detention (see, among many other authorities, *Stanev*, cited above, § 168). In respect of a person of unsound mind, it is essential that such a person should have access to a court, have a right to seek judicial review of his or her own motion, and the opportunity to be heard either in person or through some form of representation. The review under Article 5 § 4 is not required to be automatic, but should rather be an opportunity for proceedings to be taken by the relevant person himself or herself (see *Megyeri v. Germany*, 12 May 1992, § 22, Series A no. 237-A, and *Gorshkov v. Ukraine*, no. 67531/01, §§ 39 and 44, 8 November 2005). Furthermore, Article 5 § 4 deals only with those remedies which must be made available during a person's detention with a

view to that person obtaining speedy judicial review of the lawfulness of the detention leading, where appropriate, to his or her release; it does not deal with other remedies which may serve to review the lawfulness of a period of detention which has already ended (see *Slivenko v. Latvia* [GC], no. 48321/99, § 158, ECHR 2003-X, and *Bataliny v. Russia*, no. 10060/07, § 69, 23 July 2015).

108. Turning to the present case, the Court notes that, apart from a reference to a general civil-law provision (Article 16 of the Civil Code), the Government did not indicate any concrete domestic remedy capable of affording the applicant, a legally incapable person, a direct opportunity to challenge the lawfulness of his confinement in the KPRI unit and the continued implementation of that measure (see also *Stanev*, cited above, § 172). Indeed, the Court notes that at the material time the domestic law, in particular Article 121 § 3 (2) of the Code of Civil Procedure (see paragraph 45 above), expressly excluded the possibility of legally incapable persons applying directly to a court (see also *Nataliya Mikhaylenko v. Ukraine*, no. 49069/11, §§ 17 and 34, 30 May 2013, and *Gorbatyuk v. Ukraine* [Committee], no. 1848/16, § 18, 7 November 2019).

109. The Court further notes that the 2016 Model regulations do not contain any provisions which provide for a procedure by which residents of psychoneurological residential institutions would be able to challenge in court the lawfulness of their placement in intensive supervision units (rooms) in such institutions. Although the Psychiatric Assistance Act refers to the possibility of discharge on grounds of a court decision finding a placement unlawful (see paragraph 47 above), the respondent Government has not explained domestic law and practice in this regard.

110. In view of the above, the Court concludes that it has not been shown that in the present case there was a legal procedure by which the applicant would be entitled to take court proceedings in which the lawfulness of his confinement in the KPRI unit could be decided, as required by Article 5 § 4 of the Convention. The above conclusion is sufficient for the Court to find that there has been a violation of that provision.

3. Alleged violation of Article 5 § 5

(a) The parties' submissions

111. The Government contended that the applicant had had a compensation remedy as provided by Articles 23 and 1167 of the Civil Code (see paragraphs 43 and 44 above). They further referred to the domestic court judgment of 10 August 2018 (see paragraph 64 above), arguing that the above-mentioned remedy had been effective both in theory and practice.

112. The applicant reiterated that, as a legally incapable person, he had been unable under domestic law to lodge a claim against the KPRI. None of the authorities had found his confinement in the unit unlawful or otherwise in breach of Article 5 of the Convention.

(b) The Court's assessment

113. 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 paragraphs 1-4. The right to compensation therefore presupposes that a violation of one of the above paragraphs has been established, either by a domestic authority or by the Court. In this connection, the effective enjoyment of the right to compensation guaranteed by Article 5 § 5 must be ensured with a sufficient degree of certainty (see *Stanev*, § 182, and *I.N.*, § 97, both cited above).

114. Turning to the present case, the Court observes that, in view of its finding of violations of Article 5 §§ 1 and 4, Article 5 § 5 is applicable. It further notes that it has found in similar previous cases that the right to compensation under Article 5 § 5 of the Convention was not ensured in the Ukrainian legal system, in particular, where there was no separate finding of unlawfulness of deprivation of liberty by the domestic authorities (see, for instance, *Sinkova v. Ukraine*, no. 39496/11, §§ 77-84, 27 February 2018, and *I.N.*, cited above, §§ 93-102). There having been no such domestic finding regarding the applicant's confinement to the unit, the Court sees no reason to reach a different conclusion in the present case.

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

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

116. The applicant also complained under Article 3 of the Convention about the conditions of his confinement in the unit. The above-mentioned provision reads as follows:

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

A. The parties' submissions

117. With reference to the information contained in paragraph 17 above, the Government submitted that there had been no breach of Article 3 of the Convention in the present case.

118. The applicant submitted that the conditions in the unit had been significantly worse than his usual conditions at the KPRI. He referred to his account of the conditions in the unit (see paragraph 19 above) and noted that the personal space in the room in which he had remained in the unit had only been 2.5 square metres. Moreover, he had not been allowed to go for a walk outside the unit or to take part in other outdoor activities during his confinement. That had caused him particular suffering, as his usual routine had been to spend most of his time walking around the KPRI territory or taking part in various activities at the community centre. As the result, the

confinement had caused significant emotional stress and deterioration of his mental health.

B. The Court's assessment

1. Admissibility

119. The Government did not raise any admissibility objection. In particular, they did not raise a non-exhaustion plea based on the fact that the applicant's lawyers apparently did not complain to the KPRI director or to any other domestic authority about the conditions of the applicant's confinement in the unit (see paragraph 117 above). Therefore, the Court will not deal with this issue in the present case (see, for instance, *Nina Kutsenko v. Ukraine*, no. 25114/11, § 111, 18 July 2017).

120. The Court notes that this complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

121. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured. When assessing conditions of deprivation of liberty, account has to be taken of their cumulative effects and the duration of the measure in question. An important factor to take into account, besides the material conditions, is the detention regime. In assessing whether a restrictive regime may amount to treatment contrary to Article 3 in a given case, regard must be had to the particular conditions, the stringency of the regime, its duration, the objective pursued and its effects on the person concerned. Lastly, the prohibition of ill-treatment in Article 3 applies equally to all forms of deprivation of liberty, and in particular makes no distinction according to the purpose of the measure in issue; it is immaterial whether the measure entails detention ordered in the context of criminal proceedings or admission to an institution with the aim of protecting the life or health of the person concerned (see *Stanev*, cited above, §§ 202 and 204-06). Furthermore, the Court has adopted the standard of proof "beyond reasonable doubt" in assessing evidence in cases which concern

conditions of detention. When collecting evidence poses an objective difficulty, an applicant, nevertheless, must provide an elaborate and consistent account of the conditions of his or her detention mentioning the specific elements, such as for instance the dates of his or her transfer between facilities, which would enable the Court to determine that the complaint is not manifestly ill-founded or inadmissible on any other grounds. Only a credible and reasonably detailed description of the allegedly degrading conditions of detention constitutes a prima facie case of ill-treatment and serves as a basis for giving notice of the complaint to the respondent Government. After the Court has given notice of the applicant's complaint to the Government, the burden is on the latter to collect and produce relevant documents. A failure on their part to submit convincing evidence on material conditions of detention may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Sukachov v. Ukraine*, no. 14057/17, § 83, 30 January 2020).

122. As regards mentally ill persons, who are more susceptible to feelings of inferiority, the assessment of whether the particular conditions of their detention are incompatible with the standards of Article 3 has to take into consideration their vulnerability. An increased vigilance is called for in reviewing whether the Convention has been complied with in respect of such persons (see *Rooman v. Belgium* [GC], no. 18052/11, § 145, 31 January 2019).

(b) Application of the above principles in the present case

123. The Court first notes that, as a consequence of the fact the applicant's lawyers apparently did not complain to any domestic authority about the conditions of the applicant's confinement in the unit (see paragraph 119 above), the information it has about those conditions is essentially limited to the positions of the parties. It cannot benefit from any domestic assessment or finding which could have been made in this respect. Nor can it benefit from any relevant report by independent bodies or non-governmental organisations as no such reports were submitted or appear to be available.

124. The Court notes the applicant's submission that with the exception of the nights of 27-30 June 2017, when he was allowed to sleep in his room at the KPRI, during the rest of the time between 27 June and 6 July 2017 he remained in the unit in which he shared a room of 15 square metres with five other residents (see paragraph 19 above). The Government did not contest those submissions and the Court finds no reason to consider them unreliable. Therefore, the personal space available to the applicant during his confinement in the unit was 2.5 square metres, which in itself raises a strong presumption of a violation of Article 3 (see, *mutatis mutandis*, *Muršić v. Croatia* [GC], no. 7334/13, § 137, 20 October 2016; and *Sukachov*, cited above, § 86). Although the applicant remained in such conditions for a comparatively short period of time, his confinement was not accompanied by

the possibility of daily outside walks and outside activities (see paragraphs 19 and 84 above). Moreover, there were other aggravating aspects of the conditions of his confinement, in particular the lack of fresh air and drinking water, and fewer opportunities to take a shower (see paragraph 19 above). Although the Government referred to the information contained in the letters written by the Department and the KPRI (see paragraph 17 above), which appeared to deny the applicant's specific submissions about the above aggravating aspects, the Court notes that those letters were general in nature and did not specifically refer to the applicant's personal situation. Moreover, they were prepared between March and May 2019, that is, almost two years after the applicant's confinement in the unit (see, similarly, *Belyaev and Digtyar v. Ukraine*, nos. 16984/04 and 9947/05, § 38, 16 February 2012; *Rodzevillo v. Ukraine*, no. 38771/05, § 53, 14 January 2016; and *Sukachov*, cited above, § 90). In such circumstances, where the Government had failed to raise a non-exhaustion plea (see paragraph 119 above) and refute the applicant's clear and consistent allegations with convincing evidence, the Court is prepared to accept the applicant's account of the conditions of his confinement in the unit and considers that there was a breach of Article 3 in the present case.

125. The Court considers that the above-mentioned conditions cannot be considered appropriate for any person deprived of his liberty, still less for someone like the applicant, a person with a history of mental disorder. It also notes the applicant's submission, not disputed as such by the Government, that confinement in the unit resulted in significant emotional stress and deterioration of his mental health, and accepts that the very nature of the applicant's condition made him more vulnerable than the average person deprived of liberty, and that his confinement in the above-mentioned conditions may have exacerbated his stress to a certain extent, and may have had a negative effect on his health (see, *mutatis mutandis*, *Sławomir Musiał v. Poland*, no. 28300/06, §§ 95-97, 20 January 2009).

126. In view of the above, the Court concludes that there has been a violation of Article 3 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

127. The applicant lastly complained under Article 3 of the Convention of the lack of an effective investigation into his confinement in the unit, under Article 13 of the lack of effective remedies in respect of his complaints concerning the confinement, and under Article 2 of Protocol No. 4 on account of the confinement.

128. Having regard to the facts of the case, the parties' submissions and its findings under Articles 3 and 5 of the Convention (see paragraphs 98-104, 108-110, 114-115 and 123-126 above), the Court considers that it has examined the main legal issues raised in the present case, and that there is no need to give a separate ruling on the admissibility and merits of the

above-mentioned complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 156).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

129. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

130. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

131. The Government argued there was no causal link between the violations found and the damage claimed and that in any event the claim was excessive.

132. The Court notes that in the present case the applicant died in the course of the proceedings before it without having left any heirs who expressed their wish to pursue his application. Accordingly, the Court does not award any sum in this respect.

B. Costs and expenses

133. The applicant also claimed EUR 14,100 for the costs and expenses incurred at the domestic level and before the Court. He provided a time sheet according to which his lawyers had spent 94 hours at the hourly rate of EUR 150, including 34 hours on his representation before domestic courts and law-enforcement authorities and 60 hours on the proceedings before the Court. The applicant submitted that he could not provide a legal assistance contract with his lawyers as he had been unable to enter into a contract under domestic law as a legally incapable person.

134. The Government submitted that the applicant had no legal assistance contract; that the claim for domestic legal costs should be rejected; and that the claim was excessive overall.

135. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for the domestic legal costs, given that the domestic court proceedings were not related to the applicant's complaints before the Court and that it did not examine separately the applicant's complaint of the lack of an effective investigation into his confinement.

136. On the other hand, the Court notes that the applicant authorised his lawyers to act as his representatives and that they did the necessary legal work in that regard. It has not been argued by the Government that the legal representatives have already been paid or for other reasons should not be compensated for the work done. Therefore, the Court considers it reasonable to award the applicant's representative, Mr Tarakhkalo, in addition to the legal aid granted, EUR 5,000, plus any tax that may be chargeable to the applicant's representative, Mr Tarakhkalo.

C. Default interest

137. 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. *Decides* to continue the examination of the application in accordance with Article 37 § 1 *in fine* of the Convention;

2. *Declares* the complaints under Article 3 (concerning the conditions of the applicant's confinement in the KPRI unit) and Article 5 §§ 1, 4 and 5 of the Convention admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's confinement in the KPRI unit;

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

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

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

7. *Holds* that there is no need to examine the remainder of the applicant's complaints;

8. *Holds*
   (a) that the respondent State is to pay the applicant's representative, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable to him, in respect of costs and

expenses, to be transferred directly into the bank account of the applicant's representative, Mr Tarakhkalo;

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

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

Done in English, and notified in writing on 15 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Síofra O'Leary President