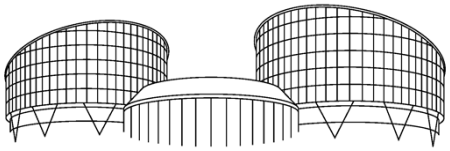

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF M.T. v. ESTONIA

(Application no. 75378/13)

JUDGMENT

STRASBOURG

23 October 2018

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 M.T. v. Estonia,

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

Robert Spano, *President,*
Julia Laffranque,
Ledi Bianku,
Paul Lemmens,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström,
Ivana Jelić, *judges,*

and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 25 September 2018,

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

PROCEDURE

1. The case originated in an application (no. 75378/13) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a stateless person, M.T. (hereinafter "the applicant"), on behalf of her son, O.T. (see paragraphs 6 and 29-32 below), on 21 November 2013. The President of the Section acceded to the applicant's request not to have her name disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicant was represented by Ms K. Rekand from the Estonian Patient Advisory Association. The Estonian Government ("the Government") were represented by their Agent, Ms M. Kuurberg, of the Ministry of Foreign Affairs.

3. The applicant complained that the review proceedings concerning the continued confinement of her son (O.T.) in a psychiatric institution did not meet the procedural requirements of Article 5 of the Convention, in particular concerning the use of expert (medical) evidence and her son's inability to initiate such proceedings himself.

4. On 29 June 2015 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Tallinn.

6. On 27 May 2010 the Harju County Court determined that the applicant's son, O.T. (born in 1984), had restricted active legal capacity (*piiratud teovõime*). It appointed the applicant as O.T.'s guardian to protect his interests in social and legal matters and in matters concerning property. The court relied on a forensic psychiatric expert opinion of 14 March 2010 according to which the applicant's son suffered from permanent paranoid schizophrenia and was incapable of understanding or controlling his actions.

7. On 25 October 2010 O.T. committed acts of a sexual nature in respect of a ten-year old girl and threatened to kill the victim.

8. Criminal proceedings were initiated and O.T. was examined by a forensic psychiatric expert who confirmed, in an expert report dated 8 November 2010, the earlier expert findings (see paragraph 6 above). The expert furthermore added that O.T. posed a danger to society and needed coercive psychiatric treatment (*psühhiaatriline sundravi*). On 6 May 2011 the Harju County Court terminated the criminal proceedings and ordered that O.T. undergo coercive psychiatric treatment, which commenced on 6 June 2011.

9. On 14 December 2012 the applicant lodged an application with the Tartu County Court for O.T.'s coercive psychiatric treatment to be discontinued or for his inpatient treatment to be replaced by outpatient treatment. In her request, she referred to an opinion given by a medical committee – comprised of O.T.'s attending doctor and the acting head of the coercive treatment department (Dr E.K.) of the hospital where O.T. was being detained – dated 14 June 2012, which stated: "substantial contact [*sisuline kontakt*] with O.T. deficient [*puudulik*], his answers to questions are sparse, poses counter-questions. Denies the committed offence, does not consider himself mentally ill. In need of continued treatment as he poses danger to society." The applicant considered that the opinion was not impartial and asked for a new independent expert assessment to be carried out with respect to O.T.

10. On 6 February 2013 the Tartu County Court dismissed the application. It relied on an opinion dated 11 December 2012 drawn up by a medical committee comprised of O.T.'s attending doctor and the head of the coercive treatment department (Dr S.K.), according to which O.T.'s mental condition had not changed. According to the opinion, substantial contact with him had been deficient, his answers to questions had been sparse, he had posed counter-questions and had made incoherent statements. During the course of the interview his facial expression had become angry from time to time, he had laughed inappropriately, and he had faked psychotic experiences. On the basis of the above, the medical committee concluded that O.T. was in need of continued psychiatric treatment. The court decided that no additional expert opinion was necessary, as under Article 403 § 1 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik* – "the

CCrP") (see paragraph 21 below) the opinion of the medical committee sufficed as evidence.

11. Following an appeal by the applicant, on 5 March 2013 the Tartu Court of Appeal quashed the above-mentioned decision because, contrary to the CCrP, the first-instance court had not examined the case in oral proceedings. The Court of Appeal noted that under Article 402-1 § 3 and Article 403 § 5 of the CCrP (see paragraph 21 below), the ordering of a new expert report had not been compulsory and the first-instance court had been entitled to rely solely on the written opinion of the medical committee or to question the attending doctor at a hearing.

12. On 30 April 2013 the Tartu County Court granted State-funded legal aid to O.T., and a lawyer *(advokaat*) was appointed to assist him.

13. The Tartu County Court re-examined the case at a hearing on 8 May 2013. It had at its disposal the medical committee opinion of 11 December 2012 (see paragraph 10 above). The head of the coercive treatment department, Dr S.K., who had participated in the drawing up of the medical opinion in question, was also heard by the court. He submitted that O.T. had not recovered: he did not have an understanding of what was going on, did not adhere to his treatment, and had accused his mother of poisoning him. In the doctor's opinion, outpatient treatment was out of the question. The applicant and O.T's legal aid lawyer expressed a wish for O.T. to be released. O.T. himself stated that he did not understand anything and did not wish to make statements.

14. By a decision of 8 May 2013 the County Court dismissed the applicant's request, considering that O.T. had not recovered to such an extent that it would be possible to discontinue the coercive treatment or change from inpatient to outpatient treatment. It observed that there was no reason to doubt the conclusions of the medical committee's opinion of 11 December 2012 or the reliability of the head of the coercive treatment department.

15. The applicant appealed to the Tartu Court of Appeal on 29 May 2013. She argued that it had not been established that O.T. posed a danger to himself or to society and that no independent expert assessment had been carried out. She considered the opinions given by the hospital's own medical committee (see paragraphs 9 and 10 above and paragraph 22 below) to be superficial and repetitive in their wording. She also invoked Article 5 § 4 of the Convention, claiming that the patient himself should have been entitled at reasonable intervals to initiate proceedings during which the continued need for treatment would be assessed. She made reference to Article 402-1 § 1 of the CCrP (see paragraph 21 below) and the explanatory annex to the relevant draft legislation (see paragraph 23 below), according to which persons subjected to coercive psychiatric treatment had no such right (see paragraph 23 below).

16. On 4 July 2013 the Tartu Court of Appeal dismissed the appeal. It held that the applicant's complaint about the lack of impartiality of the doctors treating O.T. was unfounded and that the County Court had rightly relied on the opinions of the medical committee and the head of the coercive treatment department. The Court of Appeal noted that an independent expert examination was mandatory in proceedings related to the initial ordering of coercive treatment. The danger to society posed by O.T. and the preconditions for applying coercive treatment had already been independently established by a court on 6 May 2011. In the proceedings at issue – which concerned the proposed discontinuation of inpatient coercive treatment or its replacement with outpatient treatment – it was not mandatory to obtain an alternative expert opinion (see paragraph 21 below). The Court of Appeal held that in a situation where the state of O.T.'s health and adherence to the treatment had not improved and the discontinuation of his inpatient treatment or its replacement with outpatient treatment was in the doctors' opinion excluded, ordering another expert examination would have been irrelevant.

17. On 19 July 2013 the applicant lodged a further appeal with the Supreme Court, reiterating the complaints made in her first appeal. She also requested legal aid, since an appeal before the Supreme Court could be lodged only by a lawyer, for the hiring of whom she had no financial means.

18. By a decision of 16 September 2013 the Supreme Court refused the applicant's request for legal aid. The Supreme Court noted that although the applicant had asked for legal aid for herself and not for O.T., she had justified her request by arguing that there was a need to protect O.T.'s rights – primarily his right to liberty. The Supreme Court went on to add that the applicant did not herself have rights in the proceedings in question that she could protect by means of securing legal aid and that there was therefore no need to recognise her right of appeal. The Supreme Court noted that the legal aid lawyer appointed for O.T. by a decision of the Tartu County Court of 30 April 2013 (see paragraph 12 above) could have lodged an appeal in his client's interests.

19. On 18 September 2017 the Government notified the Court that the psychiatric treatment of the applicant's son had been terminated, at the request of the applicant, by a decision of the Tartu County Court of 21 September 2016.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The relevant legislation

1. Penal Code

20. Article 86 § 3 of the Penal Code provides that coercive psychiatric treatment shall be applied until the person in question recovers or ceases to pose a danger. The termination of such treatment must be ordered by a court.

2. Code of Criminal Procedure

21. The CCrP provides in the relevant parts as follows:

Article 402-1 – Alteration of the administration of coercive psychiatric treatment

"(1) Taking into consideration the opinion of a psychiatrist or medical committee that has examined the person subjected to coercive treatment, coercive inpatient treatment may be replaced by outpatient treatment ..., if such a request is submitted by a person close to the person being treated ..., a statutory representative, a health-care provider or the counsel of that person ...

...

(3) Any alteration of the administration of coercive psychiatric treatment shall be decided by a ruling of a court in the locality of the health-care provider [in question], in the presence of a prosecutor and counsel. If coercive inpatient treatment is replaced by coercive outpatient treatment, the person subjected to treatment and his or her guardian shall also be summoned to the hearing, but their failure to appear shall not hinder the hearing of the matter. If necessary, the court may involve other persons or order an expert assessment upon deciding on the alteration of the administration of coercive psychiatric treatment."

Article 403 – Termination of the administration of coercive psychiatric treatment

"(1) If a person recovers as a result of coercive psychiatric treatment administered to him or her – or, in the opinion of a psychiatrist or a medical committee that has examined the person subjected to coercive treatment, there is no need for the further administration of coercive treatment – then a court shall terminate the administration of coercive psychiatric treatment upon the recommendation of the health-care provider [in question].

...

(4) Taking into consideration the opinion of a psychiatrist or medical committee who has examined the person subjected to treatment, a court may terminate the administration of coercive treatment upon a request submitted by a person close to the person being treated ..., [or by] his or her statutory representative or counsel.

(5) The termination of the administration of coercive psychiatric treatment shall be decided on by a ruling of a court in the locality of the health-care provider [in question], in the presence of a prosecutor and counsel. The person subject to treatment and his or her guardian shall also be summoned to the court hearing, but their failure

to appear shall not hinder the hearing of the matter. If necessary, the court may involve other persons or order an expert assessment upon deciding on the termination of the administration of coercive psychiatric treatment."

3. Regulation No. 35 of 26 August 2011 of the Minister of Social Affairs

22. Regulation No. 35 of 26 August 2011 of the Minister of Social Affairs "Requirements for providers of coercive psychiatric treatment, requirements for coercive psychiatric treatment, and the organisation of the work of health-care providers upon the implementation of coercive psychiatric treatment ordered by a court" (*Psühhiaatrilise sundravi osutajale esitatavad nõuded, psühhiaatrilise sundravi nõuded ja tervishoiuteenuse osutaja töökorraldus kohtu poolt määratud psühhiaatrilise sundravi kohaldamisel*)) provides that patients in inpatient psychiatric treatment must undergo a medical examination by a committee every six months. Patients in outpatient psychiatric treatment must undergo such an examination at least once a year (section 3(6)). The medical committee conducting such an examination must comprise at least two psychiatrists. In the course of the examination the medical committee decides whether inpatient coercive treatment is to be replaced with outpatient treatment, whether outpatient coercive treatment is to be replaced with inpatient treatment, or whether the coercive treatment of the patient needs to be continued, taking into account his or her state of mind and the danger to society that he or she poses (section 3(7)).

23. According to the explanatory annex to the legislation amending the CCrP (no. 599 SE) by which, *inter alia*, the provisions concerning coercive psychiatric treatment were revised, a person subjected to coercive psychiatric treatment was not listed in Article 402-1 § 1 as someone having the right to initiate the replacement of such treatment, as such a person would presumably be in a state of mental incapacity. The amended version of Article 402-1 § 1 entered into force on 1 September 2011 (see paragraph 21 above).

B. The relevant case-law

24. On the basis of the requirement to be represented by counsel (Article 402-1 § 3 and Article 403 § 5 of the CCrP), a person who is under coercive psychiatric treatment has the right to legal aid assistance in proceedings for the termination or replacement of that treatment. In cases nos.1-2-9055 and 1-10-8154 of 2 January 2014 and 9 October 2014, respectively, the Tartu County Court considered that a personal request by a patient regarding his treatment constituted an application for legal aid (the legal aid lawyer would then take over the patient's claim).

25. In a judgment of 5 June 2017 in case no. 3-1-1-62-16 the Supreme Court assessed the constitutionality of Article 403 § 4 of the CCrP. Referring, *inter alia*, to Article 5 § 4 of the Convention, the Supreme Court stated that the provision in question had to be construed in such a way that an application lodged by a patient himself or herself for the termination of his or her treatment must be seen as a request for legal aid and that such aid must then be granted. The legal aid lawyer can then supplement or elaborate on the patient's original application, but this is not decisive for the initiation of the procedure. Against this background the Supreme Court found that persons under coercive treatment have an effective remedy in seeking the termination of that treatment. The court furthermore underlined that courts deciding on such requests can either rely on medical opinions provided by psychiatrists sitting on a medical committee or they can order a separate forensic medical expert opinion.

III. RELEVANT INTERNATIONAL LAW AND PRACTICE

26. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") visited Estonia between 9 and 18 May 2007. Among the institutions visited was the Viljandi Hospital Foundation (*Sihtasutus Viljandi Haigla*), which admits patients in respect of whom coercive psychiatric treatment has been ordered by a court under section 86 of the Penal Code.

27. In paragraph 123 of its report CPT/Inf (2011) 15, the CPT made the following remark:

> "The procedure by which involuntary placement in a psychiatric/social welfare establishment is decided should offer guarantees of independence and impartiality as well as of external psychiatric expertise. Further, such placement should cease as soon as it is no longer required by the patient's/resident's mental state. Consequently, the need for placement should be reviewed by an appropriate authority at regular intervals. In addition, the patient/resident himself/herself should be able to request at reasonable intervals that the necessity for placement be reviewed by a judicial authority."

28. In the specific context of coercive psychiatric treatment (referred to as "forensic psychiatry" in the report), the CPT noted:

> "137. As regards forensic psychiatry, the placement of persons who have been declared criminally irresponsible and are subjected to coercive treatment in a psychiatric establishment under Section 86 of the Penal Code – or who are under assessment – is regulated by Sections 393 to 403 of the Code of Criminal Procedure. The relevant provisions provide for appropriate safeguard in the context of placement procedures and do not call for any particular comment.
>
> Placement under Section 86 of the Penal Code is for an indeterminate period. It may be terminated by a court decision, on the basis of a proposal from the medical institution or following a request by the legal representative, counsel or a family member of the person concerned. The law does not explicitly allow forensic patients

themselves to request a judicial review during their placement. However, according to a judge met by the delegation, in practice, such requests would not be declared inadmissible but would be examined on the merits. **The CPT recommend that the right for forensic patients to request, at reasonable intervals, a judicial review of their placement be formally guaranteed**.

138. The need for coercive psychiatric treatment must be examined every six months by a commission comprising at least two psychiatrists. From the information gathered by the delegation, it transpired that, at Viljandi, such reviews were carried out at the required intervals by the Hospital's commission (comprising at least two psychiatrists). However, Estonian legislation does not provide for a regular judicial review of involuntary admissions for the purpose of coercive treatment.

The CPT invites the Estonian authorities to provide for an automatic judicial review, at regular intervals, of placements ordered under Section 86 of the Penal Code. This review procedure should also offer guarantees of objective medical expertise."

THE LAW

I. THE APPLICANT'S STANDING UNDER ARTICLE 34 OF THE CONVENTION

29. The Court notes that in the application form O.T.'s mother identified herself instead of O.T. as the applicant. Notwithstanding the fact that the Government did not dispute the applicant's standing to bring the application on behalf of her son, the Court would make the following observation.

30. The Court reiterates that in order to be able to lodge an application pursuant to Article 34, a person, non-governmental organisation or group of individuals must be able to claim "to be the victim of a violation ... of the rights set forth in the Convention ...". In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure (see *Micallef v. Malta* [GC], no. 17056/06, § 44, ECHR 2009). The Court considers that it would generally be appropriate for an application to name the injured person as the applicant and for a letter of authority to be provided allowing another member of the family to act on his or her behalf. This would ensure that the application was brought with the consent of the victim of the alleged breach and would avoid *actio popularis* applications (see *İlhan v. Turkey* [GC], no. 22277/93, § 53, ECHR 2000‑VII).

31. In the present case, O.T. was divested of legal capacity (see paragraph 6 above) and was directly affected by the coercive psychiatric treatment that was the subject of the impugned proceedings. M.T. was appointed as his legal guardian (see paragraph 6 above). In that capacity she brought the impugned proceedings before the domestic courts (see paragraphs 9, 11, 15 and 17 above). Against that background, the Court does not see any abuse in the fact that M.T. named herself as the applicant

in the present proceedings. Nor does it discern any other grounds to turn down the complaints concerning the infringements of her son's rights because of this very fact.

32. In the light of the above considerations, the Court finds that M.T. may be regarded as having validly introduced the application on behalf of her son (compare *Krivova v. Ukraine*, no. 25732/05, §§ 33–39, 9 November 2010, and *İlhan*, cited above, §§ 54–55).

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

33. The applicant complained under Article 5 § 1 of the Convention of the lack of objectivity, independence and thoroughness of the medical committee, whose opinions the domestic courts relied on when refusing to alter or terminate O.T.'s treatment. Relying on Article 5 § 4 of the Convention, the applicant further complained of the impossibility for her son to challenge the lawfulness of his detention.

34. The Court considers that the applicant's complaints concern the proceedings in which O.T.'s coercive psychiatric treatment was subject to judicial review. Being the master of characterisation to be given in law to the facts of the case (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 145, ECHR 2017), it considers that both of the complaints should be examined from the standpoint of Article 5 § 4 of the Convention, which reads as follows:

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

A. Admissibility

1. Exhaustion of domestic remedies

(a) The parties' submissions

35. The Government submitted that the applicant had not exhausted the domestic remedies. Her request for legal aid, which was rejected by the Supreme Court, could not be regarded as constituting an appeal to the Supreme Court. At the same time, the State-appointed legal aid lawyer (see paragraph 12 above) had not appealed, despite having been authorised to represent O.T. until the final adjudication of the case (see paragraph 18 above). The applicant had not suggested either at the domestic level or in her application to the Court that the legal aid lawyer had not been diligent.

36. In addition, the Government pointed out that the question of O.T. not being able to directly challenge the lawfulness of his confinement had not been raised before the domestic courts.

37. The applicant stressed that under Estonian legislation her son did not have the right to challenge the coercive treatment personally. It was therefore incomprehensible why the Supreme Court had denied her legal aid for lodging an appeal on the grounds that her own rights had not been violated.

38. The applicant noted that she had had very little contact with the legal aid lawyer appointed by the State for O.T. and that she lacked knowledge of how, if at all, the lawyer had represented her son's rights. She had been unaware that she should have overseen and followed up on the lawyer's work. Moreover, O.T., due to his precarious mental state, had not been in a position to instruct his lawyer to appeal further. Instead, the applicant had lodged an appeal with the Supreme Court herself, together with a request that she be provided with State-funded legal aid.

39. She asserted that she had invoked in the domestic proceedings the issue of O.T. not being able to challenge his treatment personally.

(b) The Court's assessment

(i) Appeal to the Supreme Court

40. The Court reiterates that under Article 35 § 1 of the Convention, it may only deal with an application after domestic remedies have been exhausted. States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-70, 25 March 2014). When making use of the domestic remedies, applicants must comply with the requirements and time-limits laid down in the domestic law (see *Vučković and Others*, cited above, § 72).

41. The Court has repeatedly asserted that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; in monitoring compliance with this rule, it is essential to have regard to the circumstances of each individual case. This means among other things that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *Kozacıoğlu v. Turkey* [GC], no. 2334/03, § 40, 19 February 2009).

42. Turning to the present case, the Court observes that it was not clear whether the domestic law allowed O.T. to challenge his treatment personally (see the wording of the relevant legal provisions and the explanatory memorandum to that law in paragraphs 21 and 23 above; see also the comments from the CPT report in paragraph 28 above). However, such a right was clearly granted to his mother, as a person close to the patient. She exercised this right in the two lower-instance courts, where no issues of standing arose. She also lodged an appeal on points of law with the Supreme Court in which she asked to be granted State-funded legal aid, as the appeal could only be validly submitted by a lawyer. However, the Supreme Court not only refused to grant State-funded legal aid to the applicant but also found that, under the domestic law, the applicant herself did not have any personal right to protect in the particular proceedings, and that there was therefore no grounds to recognise her right of appeal against the ruling of the Court of Appeal (see paragraph 18 above).

43. Given that it is primarily for the domestic courts to interpret domestic legislation, the Court cannot but conclude that – in the absence of a legally recognised right of appeal to the Supreme Court (even when represented by a lawyer – see paragraph 18 above) – the applicant has exhausted domestic remedies by raising her complaints before the courts of first and second instance in respect of O.T.'s treatment. In any event, although not questioning the right of the States to set certain formal requirements for the lodging of appeals with the Supreme Court (such as being represented by a lawyer and laying down criteria for the granting of State-funded legal aid), the Court finds that in the particular circumstances of the case, it would be overly formalistic to consider that the applicant had not done everything that could reasonably be expected of her in order to exhaust the domestic remedies.

44. The issue of the legal aid lawyer appointed for O.T. not having appealed against the decisions of the first and second-instance courts does not alter that finding. The domestic law authorised either a person close to a patient under psychiatric treatment (such as a mother) or a lawyer to institute proceedings for the termination or alteration of such treatment (see paragraph 21 above). It does not appear that the granting of legal aid to O.T. would have revoked M.T.'s right to pursue the claim before the domestic courts. The Court will not speculate on the issue of whether O.T. was in a condition to instruct his legal aid lawyer to appeal against the decisions of the lower-instance courts.

45. In the light of the above-mentioned findings the Government's objection must be rejected.

(ii) Raising the complaint in substance before the domestic courts

46. The Court has consistently held that the rule on exhaustion of domestic remedies under Article 35 § 1 of the Convention requires that the

complaints intended to be made subsequently before it should have been made to the appropriate domestic body, at least in substance (see *Muršić v. Croatia* [GC], no. 7334/13, § 70, ECHR 2016).

47. Turning to the facts of the present case, the Court agrees with the applicant that the complaint concerning O.T.'s inability to challenge the lawfulness of his detention in coercive psychiatric treatment was raised in substance in her appeal of 29 May 2013 to the Tartu Court of Appeal (see paragraph 15 above). She repeated the same concerns in her appeal to the Supreme Court (see paragraph 17 above). The Court thus considers that the complaint has been raised in substance before the domestic courts and the Government's objection must be rejected.

2. Complaint concerning O.T.'s access to judicial review

48. The Government asserted that regardless of the claim concerning O.T.'s lack of direct access to judicial review, the applicant, as O.T.'s legal guardian, had successfully initiated the review challenging her son's detention.

49. The Court considers that the Government have essentially questioned O.T.'s victim status in relation to his right to challenge his detention during the coercive psychiatric treatment.

50. In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure in question (see *Micallef*, cited above, § 44).

51. Turning to the instant case, the Court observes that – even assuming that O.T. did not have the right to lodge an independent request regarding the alteration or termination of his treatment (see paragraphs 21, 23 and 28 above) – such a review was set in motion by his mother and her request was adjudicated upon on the merits by both the first- and second-instance courts. The fact that the Supreme Court refused the mother's request for legal aid on the ground that she herself had no rights to protect in the proceedings in question does not alter that finding. In the proceedings before the first- and second-instance courts, O.T. was granted a legal aid lawyer to represent his interests (see paragraph 12 above).

52. Therefore, on the basis of the facts of the present case, the Court concludes that O.T. was not deprived of the judicial review required under Article 5 § 4 of the Convention and, to that extent, was not a victim of the alleged limitations arising from the domestic law (compare *M.H. v. the United Kingdom,* no. 11577/06, §§ 92-96, 22 October 2013).

53. Although a question may arise as to whether at the material time O.T. himself had the right to lodge an independent request under the CCrP, the Court notes that the relevant subsequent case-law clarifies that a patient subjected to coercive psychiatric treatment must have the possibility of direct and independent access to a court to challenge his or her detention

and must, for that purpose, be provided with legal aid (see paragraphs 24 and 25 above).

54. Against that background the complaint under this head has to be rejected on the ground that O.T. cannot claim to be a victim within the meaning of Article 34 of the Convention.

55. The complaint must accordingly be declared inadmissible *ratione personae* in accordance with Article 35 §§ 3(a) and 4 of the Convention.

3. Complaint concerning the expert medical opinion

56. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. As no other grounds for declaring the complaint inadmissible have been established, the Court concludes that it must be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

57. The applicant considered that the danger to society posed by her son had not been established and that no independent and impartial expert examination had been carried out. Instead, the domestic courts had relied on the opinions given by the medical committee of the psychiatric hospital where her son was being detained. Referring to the medical committee opinions of 12 December 2011, 14 June and 11 December 2012, and 10 June 2013, the applicant considered that they had contained scant and repetitive reasoning of a general nature, and had not considered less intrusive measures than that of coercive inpatient treatment.

(b) The Government

58. The Government submitted that the medical committee which had carried out regular six-monthly psychiatric assessments of O.T. since his placement in the hospital had always included another psychiatrist, in addition to his attending doctor. On every occasion the committee had reached the same conclusions: substantial contact with O.T. was deficient; he was autistic and his thinking was disconnected; he denied committing a criminal act and "lacked disease consciousness" – he did not see himself as ill, nor did he consider treatment necessary. On the basis of the above, the examinations had led the committee to conclude that O.T. needed coercive treatment in the light of the continuing threat that he posed to society. The Government asserted that the opinion of an attending doctor, who was most familiar with the patient's condition, could not be underestimated.

59. The Government pointed out that once a request to replace or terminate coercive psychiatric treatment had been lodged with a court, the latter had the discretion to assess on a case-by-case basis whether to involve other persons or to commission an additional (including external) expert assessment (see paragraphs 11, 16 and 21 above).

60. In reaching their decisions, the domestic courts had not relied only on the initial external forensic psychiatric assessment of O.T. of 8 November 2010 (see paragraph 8 above), but had also taken into account the decision of the medical committee, the testimony given by the psychiatrist at the hearing – the reliability of which could not be questioned – and the statements given at the hearing by the applicant and her son. Additional expert assessment had not been considered necessary (see paragraphs 11 and 16 above). There was no reason to doubt that the experts had been fully qualified and had based their opinions on their best professional judgment. Moreover, the Government stressed that the domestic courts were in a better position than the Court to assess the value of expert reports.

61. The Government referred to the fact that the applicant had not presented any argument showing that O.T.'s condition had actually changed or that there had been a breakdown in relations or a loss of trust between O.T. and the attending doctors. While the applicant had criticised the repetitive wording of the medical opinions, the Government noted that they could not be expected to differ substantially given the fact that the patient's condition had not changed.

2. The Court's assessment

(a) General principles

62. The Court reiterates that Article 5 § 4 entitles detained persons to institute proceedings for a review of compliance with the procedural and substantive conditions which are essential for the "lawfulness", in Convention terms, of their deprivation of liberty.

63. The Court has outlined three minimum conditions for the lawful detention of an individual on the basis of unsoundness of mind under Article 5 § 1 (e) of the Convention: he must reliably be shown to be of unsound mind, that is to say a true mental disorder must be established before a competent authority on the basis of objective medical evidence; 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 *X v. Finland*, no. 34806/04, § 149, ECHR 2012 (extracts); see also *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33).

64. The notion of "lawfulness" under paragraph 4 of Article 5 has the same meaning as in paragraph 1, so that a detained person is entitled to a

review of the "lawfulness" of his detention in the light not only of the requirements of domestic law but also of the Convention, the general principles embodied therein and the aim of the restrictions permitted by Article 5 § 1 (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 168, ECHR 2012, and *M.H.*, cited above, § 74).

65. In the context of Article 5 § 4 the Court has stressed that the required medical assessment must be sufficiently recent as to enable the authorities to assess the mental health of the person concerned at the time when the request for discharge is examined (*Ruiz Rivera v. Switzerland*, no. 8300/06, § 60, 18 February 2014).

66. The Court observes that in deciding whether an individual should be detained as a "person of unsound mind", the national authorities are to be recognised as having a certain margin of appreciation. It is in the first place for the national authorities to evaluate the evidence adduced before them in a particular case; the Court's task is to review under the Convention the decisions of those authorities (see *X*, cited above, § 150, in the context of Article 5 § 1 of the Convention).

(b) Application of these principles to the present case

67. Turning to the facts of the present case, the Court notes that the initial order placing O.T. in coercive psychiatric treatment relied on an independent external forensic psychiatric expert report of 8 November 2010. The applicant did not challenge its findings. The impugned proceedings concerned the applicant's request for judicial review of O.T.'s continued coercive psychiatric treatment. In view of the central role of a medical opinion in such proceedings, the domestic courts relied on the expert opinion of 11 December 2012 of the medical committee comprised of O.T.'s attending doctor and the head of the department of the hospital where O.T. was being treated (see paragraphs 14 and 16 above).

68. Given the time that elapsed since the last external forensic psychiatric expert report, the Court does not consider that recourse to an independent psychiatric opinion, which is an important safeguard against possible arbitrariness in decision-making (see *X*., cited above, § 169; *H.W. v. Germany*, no. 17167/11, §§ 112-113, 19 September 2013; and *Ruiz Rivera*, cited above, § 64), was necessary. The fact alone that an opinion was provided by doctors of the same hospital in which the applicant was being treated is not sufficient to draw the conclusion that they would not be able to carry out their duties with the required impartiality, professionalism and objectivity (as required by CPT, see paragraph 28 above) if there is nothing to indicate a breakdown in trust between the applicant and the staff of the institution or any deadlock in the evolution of the situation. Therefore, it does not, in itself, necessarily lead to the finding of a violation under Article 5 of the Convention (see *C.W. v. Switzerland*, no. 67725/10,

§ 48, 23 September 2014 and *Van Zandbergen v. Belgium*, no. 4258/11, § 36, 2 February 2016).

69. The Court finds noteworthy that the relevant expert opinion on which the Estonian courts relied was sufficiently recent. Lastly, insofar as the applicant complains about other procedural aspects such as, *inter alia*, that the expert opinions themselves are sufficiently reasoned (see *Erdinç Kurt and Others v. Turkey*, no. 50772/11, §§ 63 and 68, 6 June 2017 and *Rõigas v. Estonia*, no. 49045/13, §115, 12 September 2017), the Court notes that the domestic courts did not rely solely on the said medical opinion (see also *Van Zandbergen*, cited above, § 43, where the succinctness of the medical opinions was not, in itself, considered to be decisive).

70. The domestic courts also heard oral evidence from the head of the coercive treatment department, Dr S.K. (see paragraph 13 above), who asserted that O.T. had not recovered, denied his condition and having committed a criminal offence, and did not adhere to the administered treatment, and that the possibility of outpatient treatment in such circumstances was therefore excluded (see *Dörr v. Germany* (dec.), no. 2894/08, ECHR 22 January 2013, where the findings of previous expert opinions were confirmed at a hearing by a prison psychologist). O.T. (represented by his counsel) and the applicant were also heard (see paragraph 13 above). In the light of the information before them, the domestic courts did not consider it necessary, although they were entitled to under the domestic law (see paragraph 21), to order an external expert opinion (see paragraphs 11 and 16 above),

71. The Court observes that other than pointing out that the doctors of the medical committee worked at the same hospital where her son was being treated, the applicant did not substantiate her concerns about the impartiality of the said doctors any further. She neither raised concerns about their compliance with the rules of professional conduct nor claimed that the bond of trust with the medical personnel of the hospital had been broken (see paragraph 68 above).

72. Against that background, and considering that it is in the first place for the national authorities to evaluate the evidence before them, the Court is satisfied that the domestic authorities could have legitimately considered to have had before them sufficient evidence to decide on the case. In those circumstances, the discretionary choice not to order an additional external psychiatric expert assessment cannot be considered arbitrary.

73. There has accordingly been no violation of Article 5 § 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that the applicant has standing to lodge and pursue the application on behalf of her son, O.T.;

2. *Declares* the complaint under Article 5 § 4 of the Convention concerning medical evidence admissible and the remainder of the application inadmissible;

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

Done in English, and notified in writing on 23 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Robert Spano
Registrar	President