

# Lashin v Russia

The European Court of Human Rights

(Application no. 33117/02)



<http://disabilityrights.law.hku.hk>



## Quick Facts

**Applicant:** Alexander Lashin

**Member State:** Russia

**Date Decided:** 22 January 2013

**Court:** European Court of Human Rights

**Issue:** Whether Article 8 (right to respect for private life), Article 5 (right to liberty), Article 12 (right to marry) and Article 13 (right to effective remedy) of the Convention have been violated because of, respectively, Lashin's inability to review his legal incapacity; his involuntary confinement in a psychiatric hospital; his inability to register a marriage and the absence of effective remedy before the Russian national authority.

**Holding:** The Court held the maintenance of Lashin's status as an incapacitated person and his inability to review so violated his right to respect for private life (Article 8). Also, his involuntary hospitalization in the psychiatric hospital violated his right to liberty (Article 5§1), so as his inability to obtain a review of the lawfulness of such detention (Article 5§4). The Court considered it unnecessary to examine Lashin's complaints under Articles 12 and 13.

# Procedural Background

## Domestic Remedies

### *Attempts to Restore Legal Capacity*

Lashin lodged an initial appeal to the Omsk Regional Court, which upheld the decision of the District Court to declare Lashin legally incapacitated due to schizophrenia. The 1<sup>st</sup> request in the Sovetskiy District Court of Omsk resulted in the status of legal incapacity and guardianship maintained. The 2<sup>nd</sup> request in the Kuybyshevskiy District Court of Omsk also resulted in the status of legal incapacity maintained. The Omsk Regional Court upheld the decision of the District Court. Lashin's relatives brought court proceedings in 2006 seeking to restore his full legal capacity. However, no information on the outcome was provided to the Court.

### *Confinement in the Psychiatric Hospital*

On application to release in the Kuybyshevskiy District Court, Lashin was informed that provisional placement was not subject to judicial review. The District Court held a hearing pursuant to the psychiatric hospital's request to confine Lashin. Yet, proceedings were soon closed as his guardian then became the hospital that his confinement was considered "voluntary". Lashin's fiancée and father were both unable to represent him to lodge any appeals on his behalf over such confinement. Lashin's fiancée and father lodged several criminal law complaints against the hospital and its doctors in various state authorities and the courts. None were successful.

## Case Summary

Leading to the conclusion that the right to respect for private life (Article 8) was breached, the Court accepted that depriving someone of his legal capacity and maintaining so may pursue legitimate aims, e.g. protecting the interests of the person concerned. The Court held that in deciding whether legal capacity may be restored, the national authorities have a certain margin of appreciation. However, the reasoning of the authorities would be subject to a stricter scrutiny, and special attention would be paid to the quality of the decision-making procedure, i.e. it must be fair and have respect towards the right to respect for private life. In addition, the Court affirmed that the right to ask a court to review a declaration of incapacity is one of the most important rights for the concerned person. The existence of a mental disorder, even if serious, cannot be the sole reason to justify full incapacitation.

On factual procedures, Lashin did not have a full review of his status, had no fresh, neutral expert assessment of his condition during the review, and was not personally present in court. Any conclusions on his mental condition were therefore unreliable. Substantively, the Russian domestic law did not provide for any intermediate form of limited legal capacity for mentally ill persons; this was held to be disproportionate to the legitimate aims, i.e. the intrusion to the person's right is more than necessary. Hence, Lashin's right to have the Government respect his private life was breached.

As for the breach of Lashin's right to liberty (Article 5), the Court reiterated that deprivation of liberty must be necessary in the circumstances. It held that an individual cannot be deprived of his liberty as being of "unsound mind" unless he is reliably, impartially shown to be of unsound mind and such mental disorder is of a kind/degree warranting compulsory confinement. Furthermore, the validity of continued confinement depends on the persistence of such a disorder. On a separate note, the Court reiterated that confinement in a psychiatric hospital does not necessarily become "voluntary" (for the purpose of adjudicating whether there is any violation of the Convention) when the guardian's consent is obtained.

On facts, the first part of Lashin’s detention was not even prescribed by law. The time-limit concerning detention in psychiatric hospital stated in the Russian law was not observed that his right to liberty (Article 5§1) is breached. As for the subsequent 1-year detention, it was considered “voluntary” by the authorities as the detaining psychiatric hospital became Lashin’s guardian and consented to his confinement. Yet, Lashin, with his incapacitated person status (as he was unable to have his mental illness and legal capacity reassessed), was unable to have the lawfulness of his confinement reviewed periodically. Therefore, there is also a violation of the right to have the lawfulness of detention reviewed (Article 5§4).

The Court considered it unnecessary to have a separate examination over the right to marry (Article 12), as Lashin’s inability to marry was one of the many legal consequences of his incapacity status, maintained in violation of the right to respect for private life. The Court also considered separate examination over possible violation(s) of the right to effective remedy (Article 13) unnecessary as the analysis on breaches to the right to respect for private life already took into account that Lashin was unable to lodge any domestic challenges or seek any reviews over his legal incapacity and the lawfulness of his detention.

## Resources

- *Lashin v Russia* (Application no. 33117 / 02)