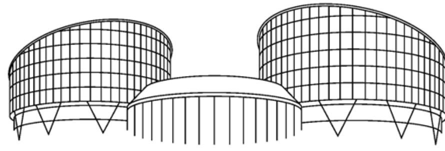

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MOCKUTĖ v. LITHUANIA

(Application no. 66490/09)

JUDGMENT

STRASBOURG

27 February 2018

FINAL

27/05/2018

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Mockutė v. Lithuania,

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

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Faris Vehabović,
Egidijus Kūris,
Carlo Ranzoni,
Péter Paczolay, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 23 January 2018,

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

PROCEDURE

1. The case originated in an application (no. 66490/09) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Ms Neringa Mockutė ("the applicant"), on 14 December 2009.

2. The applicant was represented by Mr A. Zeleckis, a lawyer practising in Vilnius. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

3. The applicant alleged, in particular, that a psychiatric hospital had revealed information about her private life to journalists and to her mother, thus breaching Article 8 of the Convention. The applicant also complained that the psychiatrists had prevented her from practising her religion, in breach of Article 9 of the Convention.

4. On 19 June 2015 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973. She grew up in Šiauliai, which in 2003, the time relevant in this case, had about 130,000 inhabitants. She currently lives in Vilnius.

A. Applicant's treatment in psychiatric institutions in 1992-2002

6. The applicant's medical records show that in May 1992 she was treated for three weeks at Kaunas Psychiatric Hospital (*Kauno psichiatrijos ligoninė*), where doctors diagnosed her with an acute paranoid reaction disorder (*ūmi paranoidinė reakcija*). The applicant had been taken to hospital by her parents, who had stated that she had previously joined the Believers in God religious sect (*Dievo tikėjimo sekta*) and that she had become agitated and disorientated. At her parents' request and once her health had improved, in summer 1992 she continued treatment at a psychiatric institution in Šiauliai (*Šiaulių psichoneurologijos dispanseris*), where her diagnosis was acute paranoid psychosis (*ūmi paranoidinė psichozė*). The doctors noted that the applicant had joined another religious sect, the Hungarian sect (*Vengrų*), and that her condition had worsened after joining in certain of the sect's activities in a forest. In particular, she had not been able to communicate well and had spoken only about religion-related topics while at the hospital. Subsequently, the applicant received treatment in the same psychiatric institution in Šiauliai in 1994, when she was diagnosed with paranoia (*paranoidinė būsena*). She was disorientated and depressed. The doctors noted that the applicant had an inner conflict – she was dissatisfied with the hyper care (*hiperglob*a) given to her by her mother, but was nevertheless not independent or mentally mature. In the summer of 1996 the applicant was again admitted to hospital and treated in the psychiatric institution in Šiauliai, where she was diagnosed with moderately severe endogenous depression (*endogeninė depresija, vidutinio gilumo*). Once her mental state had improved, the applicant refused to stay in psychiatric institution and was released.

7. On an unknown date, the applicant obtained a degree in law. In 1997 she won a competition to pursue postgraduate studies (*podiplominei stažuotei*) in the United States, where she studied for two years.

8. In May 2002, the applicant's father became ill with cancer. The applicant was distressed, did not sleep well and had a car accident. Her mother took her the same month to the Volte private hospital in Vilnius, where she was diagnosed with post-traumatic stress disorder (*potrauminio streso sutrikimas*). She spent a week in the hospital and was released at her own wish so she could be treated as an outpatient.

9. In December 2002 the private company which employed the applicant as an in-house lawyer was put into liquidation. The applicant later found a job as a lawyer at the Ministry of Economy (*Ūkio ministerija*).

B. The applicant's involuntary placement and treatment at Vilnius Psychiatric Hospital in 2003

10. In February 2003 the applicant made her first visit to the Ojas Meditation Centre, the Lithuanian branch of the Osho religious movement (see *Leela Förderkreis e.V. and Others v. Germany* (no. 58911/00, § 6, 6 November 2008), where she started meditating (*pradėjo medituoti*). She states that she found "inner spiritual and emotional healing for [her] stressed and disharmonious inner state, [caused by her] father's illness, car accident and the loss of [her previous private sector] job".

11. According to the applicant's medical records and court decisions (also see paragraphs 29, 33 and 45 below), on the morning of 7 May 2003 she arrived for work as usual at the Ministry of Economy in Vilnius. She suddenly felt exhausted and asked her superior (*viršininkė*) for some time off. When her superior refused, the applicant slammed doors and ran out of the office. She was stressed and agitated. She then left her vehicle unlocked in the middle of the street, returned to her apartment, undressed completely, and began screaming on her balcony. She did not open the door to her work colleagues. The applicant's mother called her the same day, but could not communicate with her because of the applicant's state of mind. The mother then asked for help from the applicant's cousin, E.Š.

At about 8 p.m. the applicant's sister, G.M., and her cousin, E.Š., arrived in Vilnius, and called an ambulance. The applicant was then taken by force to Vilnius Psychiatric Hospital (*Respublikinė Vilniaus psichiatrijos ligoninė*), a public hospital under the Ministry of Health Care.

12. At the psychiatric hospital, the applicant refused to sign a form consenting to her admission and treatment. Her cousin did so instead, at 9.15 p.m. The applicant was agitated, aggressive and could not understand the situation. She was physically restrained three times for forty minutes, and forcibly administered neuroleptics, including haloperidol. She fell asleep at 4.20 a.m. on 8 May.

13. Later the same morning, the applicant was seen by a psychiatrist, doctor D.Š., who was also a head of division at that hospital, and doctor A.G. The doctors indicated in her medical records that the applicant "did not object to being treated" at that hospital (also see paragraph 29 below).

14. In her application to the Court, and without being contradicted on this point by the Government, the applicant stated that from 8 May to 13 May 2007 she had been placed under the strictest patient regime at Vilnius Psychiatric Hospital. She had been supervised by a nurse twenty-four hours a day in a ward with eight other patients. She had not been able to leave the ward without a nurse.

From 13 May to 5 June, the applicant was under a strict care regime. She could have a walk around the hospital grounds, but only if accompanied by a nurse.

On 5 June, and until her release on 26 June 2003, the applicant's care regime was changed and at certain times of the day she could take walks on her own within the territory of the hospital.

15. The applicant's medical record of 26 May 2003 reads that the applicant at that time did not yet fully understand how sick she was (*pilno liguistos būklės suvokimo dar nėra*). The record also states that "it has emerged that the patient attends the Osho non-traditional meditation and improvement centre. During conversation [the applicant] states that attending the centre 'brings her peace' while not disturbing her social functions; it is also her 'essential interest'. [The applicant] has an uncritical attitude to attending the centre. Psycho-correction therapy to be continued".

16. The record of 2 June 2003 reads that the applicant was clear-headed (*mąstymas nuoseklus*) and was not agitated (*afektas adekvatus*). The applicant "was gradually adopting a critical attitude towards psychotic behaviour and also about ways to spend her free time. The treatment was to be continued."

17. The record of 20 June 2003 reads that "during psycho correction, the applicant was categorical about attending the Ojas Centre, and asserted that 'it was a personal matter (*tai jos asmeninis reikalas*)'. The applicant showed no psychotic symptoms."

18. The applicant was released from Vilnius Psychiatric Hospital on 26 June 2003, after fifty-two days. Her medical records, issued by that hospital and later confirmed by the court appointed experts, stated that from 8 May until 26 June 2003 the applicant had a transitory psychotic disorder (*tranzitorinis psichozinis susirgimas*), which was a serious mental disorder.

The applicant's medical record of 26 June 2003 stated that her affect (mental state) was flat (calm) and stable (*afektas lygus, stabilus*) and that she was clear-headed. She had realistic and concrete plans for the future, had a critical attitude towards psychotic behaviour (*atsiradusi kritika psichoziniam elgesiui*), and had promised to continue treatment as an outpatient.

C. The *Srovės* television programme and the applicant's open letter in response

1. *Broadcast of the* Srovės *television programme*

19. On 17 June 2003, while the applicant was still being held in Vilnius Psychiatric Hospital, an episode of the *Srovės* television programme was aired on the LNK national television channel. The channel made an announcement (*anonsas*) about the forthcoming broadcast in the following way:

> "R.S. [journalist]: a secret has been revealed (*demaskuota paslaptis*). There is a centre which has not been registered anywhere and where the meditation practised is

so powerful that to become a member you have to submit medical proof that you are not ill with HIV. ... After such meditation Violeta is today in a psychiatric hospital. Her mother is in tears ...”

20. The programme itself contained the following statements, including two by doctor D.Š., head of division and a psychiatrist at Vilnius Psychiatric Hospital, who was interviewed by the journalist on what appeared to be the premises of Vilnius Psychiatric Hospital:

“A.K. [journalist]: B. is a woman who has had a management job all her life. ...Today B. has agreed to talk because what has happened is completely unexpected. The woman did not foresee disaster, she did not foresee how her older daughter, who is now an adult, the thirty-year-old Violeta, had been charmed and what she got herself involved with.”

“R.S.: The organisation we are talking about today has many secrets ...”

“Doctor D.Š.: It does not appear that this young woman (*mergina*) would participate in orgies. She is not hypersexual, and, well, you know, as far as I have learned, she is of high morals and studied for a couple of years in America for a master’s degree.”

...

“R.S.: We are meeting Violeta’s mother and her seventeen-year-old sister at Vilnius train station. The mother and her daughter came here by train from Šiauliai, wishing to tell Violeta’s story. They did not wish to meet in Violeta’s home town (*gimtuosiuose namuose*), Šiauliai. They are afraid to hurt Violeta’s father. He is seriously ill and it would be hard for him to accept (*išgyventi žinią*) what has happened to his elder daughter. More than a month ago, in the apartment in the capital where Violeta lives, the most horrible event in the young woman’s life took place. Violeta suddenly had a complete nervous breakdown, acute psychosis. For Violeta’s family, the reason for that psychosis is the influence of the Ojas Meditation Centre.”

The programme then discussed the activities of the Ojas Meditation Centre in Vilnius. The journalist implied that the followers of Osho in Vilnius held sex orgies. As to the applicant’s identity, the journalist also mentioned that “Violeta obtained a master’s degree abroad, had an important job in State service (*dirbo atsakingą valstybinį darb*ą)” and that the person was “currently being treated at a psychiatric hospital”. The programme included the following statements:

“R.S.: Violeta’s family state that a couple of weeks before the tragedy Violeta would meditate all day and practically not speak to anyone else. She is currently being treated in a psychiatric hospital. ...After two months of meditation Violeta was placed in a psychiatric hospital, in a state of acute psychosis (*ūmios psichozės būsenoje*).”

“Doctor D.Š.: They [people belonging to sects] do not talk about it at all. As far as I have heard, the teachings there [at the Ojas Meditation Centre] take a couple of years, and enlightment happens or something of that kind. This takes place over four years, something is being cleansed. She [Violeta] does not talk about that. She even says that she performs some kind of practice (*atlieka praktikas*) there; she hides [things]. This is a common trait of members of sects, that they very much hide that fact. Or, if [things] come to light, they portray it as completely innocent. That is very common.”

M.V., who according to the register of religious organisations in Lithuania is the "leader" and master (*lyderis* (*meistras*)) of the Ojas Meditation Centre in Vilnius, stated during the broadcast that the applicant had been terrorised by her mother. The broadcast concluded with statements by the journalist and M.V.:

> "R.S.: Maybe it is a coincidence, but a clear danger to Violeta's mental state appeared just after she had started meditating in accordance with Osho teachings. The young woman will need a long and difficult course of medical treatment (*mergina dar ilgai ir sunkiai gydysis*). The fact that she has only been in this [Ojas Meditation] centre for a couple of months leads one to reflect on how the practices of the Ojas Meditation Centre can affect someone who is constantly seeking to liberate their soul."
>
> "M.V.: Actually, there is a Catholic atmosphere and a Catholic resistance, maybe even a Christian resistance, against meditation, because there is no God in meditation ..."

The applicant's mother and sister were shown during the programme and identified by their real first names as "B., Violeta's mother" and "G., Violeta's sister". They made statements about the destructive influence that, in their view, the Ojas Meditation Centre had had on the applicant.

2. *The applicant's open letter in response to the* Srovės *programme*

21. On 14 August 2003 on the internet site of the Ojas Meditation Center the applicant published a five-page open letter to the journalists at *Srovės*, signing it with her real name and surname. She expressed regret that the broadcast had not been an objective portrayal of her story. She stated that "by using me, you have maybe created an interesting story, but it is very one-sided. Maybe by unraveling (*narpliodamos*) the story through my mother you also wanted to protect me and sought to help me, but in reality your broadcast has caused me to feel much distrust and a lot of pain". The applicant then mentioned that she had previously been admitted to psychiatric institutions in 1992 and 2002, emphasising that those two periods had been unrelated to meditation. She also wrote that she had only started attending the Ojas Meditation Centre in February 2003 and that her emotional breakdown in May 2003 had had no connection to those visits. For the applicant, the *Srovės* journalists had therefore given an unfair account of her story, and had shown bias by implying that her mental health issues had been caused by meditating at the Ojas Centre. The applicant also stated that in 2002 she had consulted several psychotherapists (*psichoterapeutai*), who had helped her realise that her psychological problems had roots in her childhood, when she had been controlled by and had lived in fear of emotional and physical violence from her mother. Even at the time of writing there had been resistance and mockery from her family when the applicant had shared her new interests, such as yoga or meditation. The applicant also stated that she "had not been put under a

spell (*neapžavėjo*)" by meditation. Instead, meditation had entered her life naturally as the result of a long and intense spiritual search. She continued:

> "Meditation for me is a way to learn about myself and the world, and on the basis of that understanding and by deepening it, to open myself to peace, joy, truth and love. Today meditation for me is a means to reduce emotional, spiritual and psychological tension and stress, to understand the reasons behind unhappiness, including by learning how to avoid it. Meditation allows me to live a more conscious life (*sąmoningesnis*) and one which is full of joy."

22. The applicant also referred in the letter to her involuntary admission to Vilnius Psychiatric Hospital in 2003, where she had been taken by force and deceit, and where she had never agreed to be treated. She wrote that the psychiatrists had blindly believed her mother's stories and had diagnosed her as being under the influence of a sect (*sektantiškumas*). That had led to the psychiatric treatment she had received being mainly directed at how to cure her from practising meditation (*pagydyti nuo meditacijos*) in a hostile environment that had damaged her psychologically and emotionally. In particular, the psychiatrists at the hospital had interrogated her (*buvau kamantinėjama*) about the Ojas Meditation Centre and its practices, forced her to promise not to meditate, alleged that sex orgies had taken place there, that meditation was harmful for her mental health, that she should follow the Catholic religion which is traditional in Lithuania and that meditation was not compatible with her "social status". During one visit (*vizitacija*), a doctor had called her "the one from the Ojas Centre", rather than using her name. The applicant also wrote that when she had spoken about meditation at the Ojas Meditation Centre doctor D.Š. had simply made fun of it, had said that that was not meditation, and that the applicant knew nothing about what meditation actually was. The applicant had not been able to resist the psychiatrists at the hospital because refusing to talk to them or disagreeing with their statements about the Ojas Meditation Centre or their instructions to stop meditating had been treated as signs of mental illness. For that reason, the amount of medication at the hospital had not been reduced for a long time, strong drugs had been injected into her, and her release from hospital had been postponed. The applicant also noted that she had intended to submit a written statement to the hospital that she refused treatment, but she had been persuaded not to do so because the doctors had threatened that otherwise they would diagnose her problems in such a way that could later prevent her from getting a job.

23. The applicant concluded by noting that in July 2003 she had attended a session at the Ojas Meditation Centre, and had finally been able to meditate and recover after nearly two months in Vilnius Psychiatric Hospital in a hostile environment that had harmed her mind and body. She saw meditation as means to live a more conscious and meaningful life.

D. Civil proceedings against Vilnius Psychiatric Hospital for compensation for non-pecuniary damage

24. In May 2006 the applicant sued Vilnius Psychiatric Hospital for compensation for non-pecuniary damage. She alleged: (1) unlawful deprivation of liberty; (2) a violation of her right to a private life; (3) a violation of her right to freedom of religion; (4) a violation of her right to the inviolability of her body; (5) failure to provide proper medical care; and (6) a breach of her right to be properly informed about her diagnosis, methods of treatment and prognosis.

25. Vilnius Psychiatric Hospital responded by saying that on 7 May 2003 the applicant had been involuntarily hospitalised since she had been in a state of acute psychosis and had posed a danger to herself and others. The hospital also submitted that the applicant had never complained in writing about being held unlawfully. The hospital argued that it had not disclosed any confidential information about the applicant, and that it could not be responsible for the actions of the applicant's mother and the way the *Srovės* broadcast had been presented. It added that the Osho religious movement had been acting outside the law in 2003 because it had only been registered in Lithuania as a religious movement on 12 April 2005 (see paragraph 56 below). Furthermore, the applicant had not proved that the hospital had had no reason to think that her non-traditional religious beliefs had been the reason behind her emotional outburst (*emocinės iškrovos priežastis*).

1. The proceedings before the first-instance court

26. The Vilnius Regional Court ordered the State Forensic Psychiatry Service at the Ministry of Health Care to produce a report to answer certain questions regarding the applicant's medical condition and her admission to Vilnius Psychiatric Hospital between 7 May and 26 June 2003 on the basis of her medical records. The forensic report was produced in November 2007.

27. On 25 June 2008 the Vilnius Regional Court granted the applicant's action.

(a) As to the lawfulness of the restriction of liberty when the applicant was held at Vilnius Psychiatric Hospital

28. The Vilnius Regional Court noted at the outset that according to Articles 27 and 28 of the Law on Mental Health Care a person could be placed in hospital without his or her consent if there was a clear and present danger of him or her harming themselves or others. Even then, a court order was needed within two days to keep the person in hospital. Should a court refuse such an order, the forced hospitalisation and treatment had to be discontinued (see paragraph 69 below).

29. On the basis of the forensic expert report and other material, the Vilnius Regional Court firstly observed that the applicant had not actually denied that she might have required medical assistance on 7 May 2003 because of her state of mind. However, the court found that as of 8 May 2003 she had no longer been in need of medical support. That was confirmed by the applicant's medical file, where doctor D.Š. had noted on 8 May at 8.15 a.m. that "the patient is responding to meaningful contact, is correctly orientated (*pacientė prieinama prasmingam kontaktui, orientuota teisingai*)". Also, at 8.30 a.m. on the same day, doctor A.G., the other psychiatrist treating her at Vilnius Psychiatric Hospital, had written that "currently the patient is sleepy because of medication ... her mind is clear, she is well orientated when it comes to place and time ... currently the affect is flat (*pacientė š.m. mieguista dėl vaistų poveikio, sąmonė aiški, orientacija vietoje ir laike tiksli... šiuo metu afektas lygus*)". The court also based itself on the applicant's other medical records. All that meant that the applicant's state of health had no longer corresponded to that set down in Article 27 of the Law on Mental Health Care to permit her further forced hospitalisation. Despite that, the applicant had been held against her will and treated at Vilnius Psychiatric Hospital until 26 June 2003, without the hospital ever asking for a court order. That had been in breach of the two-day time-limit set in Article 28 of the Law on Mental Health Care.

30. The Vilnius Regional Court also agreed with the applicant's argument that she had not been able to leave the hospital because she was under the influence of drugs, had faced a threat of being physically restrained if she disobeyed the doctors, and had been under a strict regime. The court noted that the requirement that a psychiatric patient should normally be able to express his or her consent to be hospitalised and treated had also been underlined by the Committee for the Prevention of Torture.

31. The Vilnius Regional Court also observed that there was no written evidence that the applicant had ever agreed to be placed in Vilnius Psychiatric Hospital between 7 May and 26 June 2003. According to the forensic expert report, the applicant had not been able to understand her actions on 7 May 2003; however, the experts had not reached the same conclusion about the period between 8 May and 26 June 2003. That notwithstanding, the applicant had been forced to stay in hospital for fifty-two days for treatment. The court also emphasised that the patient was always the weaker party in relation to the hospital and its personnel. The hospital's argument that the applicant had agreed to stay by acquiescence was therefore null and void. The court also relied on doctor D.Š.'s admission during court hearings that the applicant's life had "not necessarily been in danger" for all of the fifty-two days of treatment and to the same conclusion by the applicant's treating doctor A.G. In fact, the records signed by doctor A.G. on 8 and 12 May 2007 stating that the applicant was being treated at the hospital had given only one side (*vienašališki*) of the situation

as they had not been countersigned by the applicant. In that context, the court also had regard to the applicant's explanation that because of the side effects of the medication (sleepiness, inability to concentrate) and the possibility of physical restraint (being tied down) in case of disobedience, she had not been able to express her disagreement about being treated at the hospital in writing. The court also considered that the consent given on 7 May 2013 by the applicant's cousin, E.Š., for the applicant to be put in hospital and treated could also not be considered as an act of agreement expressed by the applicant.

32. In the light of those factors, the Vilnius Regional Court concluded that the procedure set down in domestic law for forced admission to hospital and treatment had not only been breached in the applicant's case, but outright disregarded.

(b) As to the applicant's right to privacy

33. The applicant's mother also testified before the Vilnius Regional Court. She said that she had learned on 7 May 2003 that the applicant was delirious and had asked E.Š. for help. That had led to the applicant being taken to Vilnius Psychiatric Hospital. The mother also said she had contacted the Ojas Meditation Centre in Vilnius about her daughter, but had not received a constructive response. She had then contacted the journalists from *Srovės*, because she had wished to find out what was happening to her daughter. She had not known what diagnosis the psychiatric hospital had given the applicant and had only told the *Srovės* journalists which hospital her daughter was in.

34. Doctor D.Š. testified that she was head of division (*skyriaus vedėja*) at Vilnius Psychiatric Hospital when the applicant had been treated there. She said that the journalists had not called her directly but that the hospital administration had informed her that they would come and had "kind of stated that the talk would be about Mockutė". The doctor testified that she had "not discussed [the applicant's] health" with the journalists, only the Ojas Meditation Centre and meditation as such.

35. The Vilnius Regional Court then turned to the applicant's complaint of a breach of her right to privacy. Relying on Article 14 of the Law on Mental Health Care and Article 2 § 1 of the Law on the Legal Protection of Personal Data (see paragraphs 59 and 61 below), the court noted that "there was evidence in the case-file (*byloje yra pateiktas įrodymas*) that doctor D.Š. had, without obtaining the applicant's consent to disclose confidential information, revealed to the *Srovės* journalists that the applicant had been diagnosed with acute psychosis (*ūminė psichozė*), that she was being treated at Vilnius Psychiatric Hospital, and that she had studied in the United States". The interview with the doctor had been shown during the *Srovės* programme on 17 June 2003. The court noted that even in 2008 (*šiuo metu*)

there were not many people in Lithuania who had studied in the United States and so that characteristic had not been very common. The court also considered that "other information revealed to the journalists about the applicant could also allow the applicant's identity to be established", although the court did not specify what other information it meant.

(c) As to the applicant's right to freedom of religion

36. The court then had regard to the applicant's complaint about freedom of religion by referring to Article 9 of the Convention. It also relied on Article 7 of the Law on Mental Health Care (see paragraph 67 below).

37. The court found valid the applicant's complaints that the doctors had tried to dissuade (*atkalbėti*) her from meditating, attempted to alter her views on non-traditional meditation religion and had treated her against meditating and attending the Ojas Meditation Centre. That conclusion was based on the applicant's medical file, which contained the following records for 26 May and 20 and 23 June 2003: " ... absence of a critical attitude towards attending [the Ojas Meditation] Centre"; "during psycho-correction expressed opinion in categorical terms about attending the Ojas Centre, argues, that 'it is a personal matter'"; "when efforts were made during psycho-correction to get the applicant to form a critical attitude (*suformuoti kritiką*) towards non-traditional religious beliefs, [the applicant] for a long time remained uncritical and also categorical". The first-instance court underlined the fact that the psychiatric hospital had not provided any proof of the suggestion that practising a non-traditional religion would place the applicant or others in danger. The court thus concluded that "by attempting to alter the applicant's attitude to non-traditional religion, meditation, and their practice at the Ojas Meditation Centre" the hospital had breached her right to freedom of religion. Lastly, the court rejected as legally irrelevant the hospital's assertion that at the time of the applicant's admission to hospital the meditation centre had been operating "unlawfully". The Vilnius Regional Court observed that the religious movement had been a party to court proceedings for its registration at the time and had been registered on 12 April 2005.

(d) As to the applicant's remaining complaints

38. After finding that between 9 May 2003 and 26 June 2003 the applicant had been placed in hospital and given treatment against her will in breach of domestic law (see paragraph 31 above), the Vilnius Regional Court considered that there had therefore been a breach of the applicant's right to the inviolability of her body. Furthermore, Vilnius Psychiatric Hospital had failed to prove that it had properly informed the applicant about her state of health, her diagnosis, the methods of treatment and the prognosis for her condition (see paragraph 70 below).

39. However, the Vilnius Regional Court dismissed as unsubstantiated the applicant's claims that she had been provided with inappropriate medical care at Vilnius Psychiatric Hospital and that the doctors there had forged her medical records.

(e) The first-instance court's conclusion

40. The Vilnius Regional Court thus granted the applicant's civil claim in full and awarded her 110,000 Lithuanian litas (LTL, approximately 31,850 euros (EUR)) in compensation for non-pecuniary damage. She was also awarded legal costs of LTL 1,000 (EUR 290).

2. *The proceedings before the Court of Appeal*

41. Vilnius Psychiatric Hospital appealed. According to the hospital, there was no proof that doctor D.Š. had disclosed confidential information about the applicant's acute psychosis and that she was being treated at the hospital. The doctor had merely given an opinion about an unidentified person. Moreover, the doctor had pointed out during the first-instance hearings that she had only given her views when answering the questions the journalists had put to her. Three witnesses – the applicant's mother, sister and the journalist R.S. – had explained during the first-instance court's hearings that the television programme had been initiated by the applicant's relatives, who had provided information about the applicant. The first-instance court's reference to studies in the United States as a way of identifying someone was not sufficiently weighty either, and such information was not protected under Article 14 of the Law on Mental Health Care.

42. As to the applicant's right to freedom of religion, the hospital argued that the lower court had erred in equating meditation with religion. The fact that since February 2003 the applicant had attended meditation sessions of "unknown origin and manner (*neaiškios kilmės ir pobūdžio meditacijas*)" and that they could have been one of the reasons behind her illness, had not been denied. The hospital insisted that in February 2003 the Ojas Meditation Centre had been operating outside the law. The hospital also relied on a 29 August 2003 statement by the Ministry of Justice that Osho movement centres did not have the status of a religion (see paragraph 55 below), which supported the hospital's view that meditation was not a religious practice. Accordingly, the applicant's "fictitious" (*tariama*) religious freedom had not been breached.

43. The applicant responded by submitting that the right to privacy included the right not to have her health or other confidential information revealed to the journalists or her mother. The applicant added that when she had been in the psychiatric hospital, doctor D.Š. had persistently asked about the meditation she practised and had spoken of it with contempt.

Doctor A.G. would tenaciously try to persuade her to denounce her religion and give up meditation.

44. On 20 March 2009 the Court of Appeal upheld the hospital's appeal in part.

(a) As to the lawfulness of the applicant's placement in Vilnius Psychiatric Hospital

45. The appellate court upheld the Vilnius Regional Court's finding that on the basis of her health on 7 May 2003 the applicant had been lawfully placed in Vilnius Psychiatric Hospital. Her condition that day had corresponded to the domestic legal requirements for involuntary hospitalisation (see paragraph 68 below). However, the hospital had not provided any evidence that her treatment from 8 May had been indispensable. It was therefore clear that as of that date her treatment at the hospital and her presence there had been involuntary and also amounted to an unlawful deprivation of liberty. The Court of Appeal relied on the Supreme Court's practice in case no. 3K-3110/2004 of 11 February 2004 to the effect that it was obligatory to follow the procedure set out in Articles 16 and 28 of the Law on Mental Health Care, both when providing a patient with the necessary help (*būtinoji pagalba*) and when placing that person in hospital without his or her consent. Under that procedure, it had been possible to place the applicant in hospital and treat her without her consent for no longer than forty-eight hours. Without a court order, the forced hospitalisation and forced treatment had to be discontinued. However, there was no information in the case file that such an order had been granted. To make matters worse, the hospital had never even asked the court for such an authorisation. The Court of Appeal thus fully shared the lower court's view that legal procedures had been outright disregarded, making the applicant's stay in the hospital unlawful.

(b) As to the applicant's right to privacy

46. The Court of Appeal noted that under Article 22 of the Constitution and Article 14 of the Law on Mental Health Care, patients had a right to have information about their health kept confidential (see paragraphs 58 and 59 above). It could not be disclosed by doctor in charge of treatment or by hospital administration.

47. That being so, the Court of Appeal did not agree with the first-instance court's conclusion that doctor D.Š.'s interview with the journalists, which had been shown during the television programme of 17 June 2003, had disclosed information that had revealed the applicant's identity. The appellate court relied on the Supreme Court's ruling in case no. 3K-3-630/2004 of 24 November 2004, where it had found that in cases where there was no direct mention of a person in a publication, the process

of identification was based on the aggregate evidence of the presence of features which could sufficiently describe the person in mind (see paragraph 63 below). In the particular case of the applicant, the Court of Appeal also referred to her open letter of 14 August 2003 to the *Srovės* journalists (see paragraphs 21 and 22 above), where she had acknowledged that the television broadcast had been instigated by members of her family, that she had not been shown in the programme in person, and that she had been given a different name. The Court of Appeal considered that the fact that the main character of the programme (*laidos herojė*) had studied in the United States was not sufficient to establish that the programme was about the applicant. As the applicant had not established that the information disclosed during the broadcast had allowed her to be identified, her claim for breach of privacy had to be dismissed.

48. Lastly, the appellate court rejected the applicant's argument that her privacy had been breached because confidential information had been given to her mother. The applicant had been treated earlier in psychiatric institutions in Kaunas and Šiauliai because of mental health problems and her mother had been aware of those previous periods in hospital. Moreover, providing information to close relatives about the applicant's health could not be regarded as a breach of her right to privacy.

(c) As to the applicant's right to freedom of religion

49. The Court of Appeal noted that the right to freedom of religion had been enshrined in Article 26 of the Constitution (see paragraph 64 below) and Article 9 of the Convention. It also noted that under Article 7 of the Law on Mental Health Care, people in hospital had the right to perform religious rites. That right could be restricted by a psychiatrist's decision only if there was a clear danger to the patient or others, and such restrictions had to be recorded in the patient's medical file (see paragraph 67 below).

50. On the facts of the case, the Court of Appeal disagreed with the lower court's conclusion that there had been a breach of the applicant's right to freedom of religion while she was in Vilnius Psychiatric Hospital. For the Court of Appeal, there was no evidence in the file that the applicant had been forbidden from performing religious rites. Even though the medical records showed (*yra matyti*) that her doctors had tried to get the applicant to form a critical attitude towards her religious convictions (*religinius įsitikinimus*), there was no information that any restrictions had been applied to her. The Court of Appeal found that "the doctors' attempts to get the applicant to form a critical attitude towards her religious convictions did not mean that [the applicant's] religious freedom had been breached".

(d) As to the applicant's remaining complaints

51. The Court of Appeal upheld the lower court's findings that there was no proof that the applicant had received inappropriate medical treatment. It also shared the lower court's conclusion that Vilnius Psychiatric Hospital had not properly informed the applicant about the treatment she received therein.

(e) The appellate court's conclusion

52. Having dismissed part of the applicant's complaints, the Court of Appeal lowered the award for non-pecuniary damage to LTL 20,000 (approximately EUR 5,800). The applicant was also ordered to pay Vilnius Psychiatric Hospital's legal costs of LTL 3,202 (approximately EUR 927). Lastly, the appellate court quashed the part of the first-instance decision on the applicant's costs being paid by the hospital so she had to bear the legal costs herself.

3. The proceedings on points of law

53. On 17 June 2009 the applicant submitted an appeal on points of law. She argued that the lower courts had failed to properly apply Convention norms on the right to privacy and freedom of religion.

54. By a ruling of 19 June 2009 the Supreme Court refused to admit the appeal for examination, holding that the applicant's arguments were not sufficient to merit examination.

E. The registration of the Ojas Meditation Centre in Lithuania as a religious community

55. On 12 March 2003 the Ojas Meditation Centre applied to the Ministry of Justice to be registered as a religious community.

On 29 August 2003 the Ministry of Justice rejected the application because it considered that although the Centre was on the "border between self-help psychology and religion (*egzistuojantis savipagalbos psichologijos ir religijos paribyje*)", it should not be treated as a religious community. Even though the Osho teachings mentioned in the Ojas Meditation Centre's by-laws were called religious, meditation there was more based on esoteric doctrines of self-improvement than on a religious practice whose main feature was connecting with God, gods or other sacred forms. The Ministry of Justice also noted that Osho movements did not have the status of a religion in western Europe countries.

56. The Ojas Meditation Centre then started court proceedings. Its action was eventually granted by the Supreme Administrative Court on 4 February 2005. The court found no evidence that the Ojas Meditation Centre propagated any controversial practices amongst its members. It was

registered as a religious community (*religinė bendruomenė*) on 12 April 2005 (see *Gineitienė v. Lithuania*, no. 20739/05, § 24, 27 July 2010).

57. In her observations sent to the Court on 13 January 2015, the applicant stated that she had continued to that day to practise meditation at the Ojas Meditation Centre.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. As to the right to privacy

58. The Constitution reads:

Article 22

> “Private life shall be inviolable.
>
> ...
>
> Information concerning the private life of a person may be collected only upon a justified court decision and only according to the law.
>
> The law and the courts shall protect everyone from arbitrary or unlawful interference with their private and family life, and from encroachment on their honour and dignity.”

59. The Law on Mental Health Care (*Psichikos sveikatos priežiūros įstatymas*), as in force at the time of the applicant’s admission to Vilnius Psychiatric Hospital in 2003, provided that patients had the right to have information concerning their health to be kept confidential. Psychiatrists, other medical doctors, nurses and other staff members and the administrations of health-care facilities had to guarantee the above-mentioned right, in compliance with the laws of the Republic of Lithuania and according to the requirements of medical ethics. Information concerning a patient’s health could be given out under the procedure established by the laws of the Republic of Lithuania (Article 14).

60. The Law on the Health System (*Sveikatos sistemos istatymas*), at the material time read as follows:

Article 52

> “1. Restriction on the disclosure of information about the state of health of a person is intended to guarantee the inviolability of his private life and state of health.
>
> 2. It shall be forbidden to make public in the media information about the state of health of a person without his written authorisation...
>
> 3. Private or public health-care specialists shall be restricted ... from violating the right to confidentiality of information about an individual’s private life or personal health ... which they have acquired while performing professional duties...”

61. The Law on the Legal Protection of Personal Data (*Asmens duomenų teisinės apsaugos įstatymas*) stated at the relevant time that personal data was any information relating to a natural person (the subject of the data) who was known or who could be identified directly or indirectly by reference to such data as a personal identification number or one or more factors specific to that person's physical, physiological, mental, economic, cultural or social identity (Article 2 § 1). The law also provided that information that was particularly personal (*ypatingi asmens duomenys*), that is information on race, ethnic origin, political or religious beliefs, health, or a person's sexual life, could only be used or disclosed if that person had clearly agreed in writing or in another form and which showed without a doubt that it was his or her will for that data to be used or disclosed (Articles 2 §§ 8 and 11).

62. The Criminal Code at the relevant time read:

Article 168.

Unauthorised Disclosure or Use of Information about a Person's Private Life

"1. Whosoever makes information about another person's private life public, or uses it for his own benefit or for the benefit of someone else, without that person's consent, where he gained access to that information through his position or profession ...

shall be punished by community service or by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to three years.

2. A legal entity shall also be held liable for an act provided for in this Article.

3. A person shall only be held liable for an act provided for in this Article subject to a complaint by the victim or a statement by the person's authorised representative or at the request of a prosecutor."

63. In civil case no. 3K-3-630/2004, decided on 24 November 2004, the Supreme Court held that when there was no direct mention of the person about whom information had been disseminated (*tiesiogiai nėra paminėtas*), the courts should ascertain whether the other circumstances that had been mentioned, taken in their entirety, could allow for the person's identification.

B. As to freedom of religion

64. The Constitution reads:

Article 26

"Freedom of thought, conscience, and religion shall not be restricted.

Everyone shall have the right to freely choose any religion or belief and, either alone or with others, in private or in public, to profess his religion, to perform religious ceremonies, as well as to practise and teach his belief.

No one may compel another person or be compelled to choose or profess any religion or belief.

The freedom to profess and spread religion or belief may not be limited otherwise than by law and only when this is necessary to guarantee the security of society, public order, the health or morals of people, or other basic rights or freedoms of the person.

Parents and guardians shall, without restrictions, take care of the religious and moral education of their children and wards according to their own convictions."

65. As regards the right to freedom of religion and the State's obligation to remain neutral, the Constitutional Court held in the ruling of 13 June 2000:

"5. ... [I]n democratic States under the rule of law, the freedom of thought, conscience and religion is recognised as a more particular expression of a broader human freedom to have one's convictions and freely express them. The notion of convictions is a broad and diverse constitutional notion, including political, economic convictions, religious feelings, cultural attitudes, ethical and esthetical views etc.

...

The right to the free expression of convictions is inseparable from the freedom to have them. The freedom of expression of convictions is an opportunity to express one's thoughts, views and convictions orally, in writing, in symbols and in other ways and means of disseminating information without hindrance. In addition, the freedom of expression of convictions includes the freedom not to disclose one's convictions and not be made to disclose them by force.

The freedom of convictions and their expression establishes ideological, cultural and political pluralism. No views or ideology may be declared mandatory and thrust on an individual, i.e. a person who freely forms and expresses his own views and who is a member of an open, democratic, and civil society. This is an innate human freedom. The State must be neutral in matters of people's convictions, it does not have any right to establish a mandatory system of views.

...

The freedom of thought, conscience and religion becomes a matter of legal regulation only to the extent that an individual expresses his thoughts or religion in his actions. As long as he has a religion or faith, it is an inviolable sphere of his private life. That state may not be limited in any way... In that respect, the freedom of religion is an absolute freedom for individuals. An individual's right not to disclose his approach concerning matters of faith or non-belief is also uncontested."

The principles of the freedom of religion and the State's neutrality in religious matters were reiterated by the Constitutional Court in a ruling of 4 July 2017.

66. The Law on Mental Health Care, as in force at the time of the applicant's confinement to Vilnius Psychiatric Hospital, stated:

Article 3

"Psychiatric patients have all the political, economic, social and cultural rights. There shall be no discrimination against psychiatric patients on the grounds of their

mental disability. A person who has had a mental illness (*psichikos liga*) in the past may not be discriminated against on that basis ...”

67. The Law on Mental Health Care also read that hospital patients had the right to perform religious rites (Article 7 § 1 (6)). That right could be restricted by a psychiatrist’s decision, but only if there was a real threat to the patient himself or to others. Such restrictions had to be recorded in the patient’s medical records (Article 7 § 3).

C. As to involuntary hospitalisation and treatment

68. Order no. 37 of the Minister of Health of 20 January 2000 stated that compulsory medical help (*būtinoji medicinos pagalba*) was to be provided when a patient was in a state of acute psychotic disorder (*paūmėjęs psichozinis sutrikimas*).

69. At the time of the applicant’s placement in Vilnius Psychiatric Hospital, the Law on Mental Health Care also read that a person who had a severe mental illness and had refused hospitalisation could only be admitted involuntarily to the custody of the hospital and involuntarily treated if there was real danger that by his or her actions the person was likely to suffer serious harm or harm the health or life of others (Articles 16 and 27). In such circumstances, the patient could be involuntarily hospitalised and given treatment in a mental health facility for a period not exceeding forty-eight hours without a court authorisation. If no court authorisation was granted within that time, the patient had to be released and the treatment terminated. The Law also provided that a court could authorise a person’s hospitalisation and treatment for an initial term of up to one month. If psychiatrists found it was necessary to continue such treatment, the courts could prolong it for up to six months each time (Article 28).

70. The Law on the Rights of Patients and Compensation for Damage to Their Health (*Pacientų teisių ir žalos sveikatai atlyginimo įstatymas*) at the relevant time provided that patients have the right to receive information about their state of health, diagnosis, the results of medical tests, proposed treatment methods and alternatives, as well as prognosis. Information should not have been provided to patients against their will, however, such a wish had to be expressed clearly and the patient’s medical history should have made mention of it (Article 6).

71. According to the practice of the Supreme Court, the doctor or hospital in charge of a case has the burden of proving that a patient has agreed to a certain treatment, for example, when drugs are injected (14 November 2001, ruling no. 3K-3-1140/2001, and 31 March 2003, ruling no. 3K-3-438/2003).

D. Other relevant law

72. The relevant provisions of the Law on the Provision of Information to the Public (*Visuomenės informavimo įstatymas*) at the material time read as follows:

Article 14. Protection of Privacy

"1. In producing and disseminating public information, it is mandatory to ensure a person's right to have his personal and family life respected.

2. Information about a person's private life may be published, with the exception of the instances stipulated in paragraph three of this Article, only with the consent of that person and if publication of the information does not cause undue harm to that individual.

3. Information concerning private life may be published without the person's consent in those cases when publication of the information does not cause harm to the person or when the information assists in uncovering violations of the law or crimes, as well as when the information is presented in the examination of the case in an open court process. ..."

III. RELEVANT INTERNATIONAL MATERIAL

A. The United Nations

1. Convention on the Rights of Persons with Disabilities

73. The relevant part of the United Nations Convention on the Rights of Persons with Disabilities, A/RES/61/106, 24 January 2007 (hereinafter: the "CRDP"), signed by Lithuania on 30 March 2007, and ratified on 18 August 2010, provides:

Preamble:

"...

16. Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status ..."

Article 22 – Respect for privacy

"1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others."

74. The United Nations Special Rapporteur on the right of everyone to enjoy the highest attainable standard of physical and mental health, Mr Dainius Pūras, has set as “one of his priorities to look into the role of the health sector and health professionals in the implementation of ambitious goals by the CRPD”. On 2 April 2015 he issued a report concerning the right to health for all people with disabilities and scrutinised the practice of deprivation of liberty in closed psychiatric institutions:

> “94. The human rights standards set forth by the [CRDP] present a good opportunity to rethink the historical legacy of previous models and to move away from those health-care practices which are against human rights and the modern public health approach. There is a unique and historic opportunity to end the legacy of the overuse and misuse of the biomedical model.
>
> ...
>
> 96. The [CRDP] is challenging traditional practices of psychiatry, both at the scientific and clinical-practice levels. In that regard, there is a serious need to discuss issues related to human rights in psychiatry and to develop mechanisms for the effective protection of the rights of persons with mental disabilities.
>
> 97. The history of psychiatry demonstrates that the good intentions of service providers can turn into violations of the human rights of service users. The traditional arguments that restrict the human rights of persons diagnosed with psychosocial and intellectual disabilities, which are based on the medical necessity to provide those persons with necessary treatment and/or to protect his/her or public safety, are now seriously being questioned as they are not in conformity with the [CRDP].
>
> 99. A large number of persons with psychosocial disabilities are deprived of their liberty in closed institutions and are deprived of legal capacity on the grounds of their medical diagnosis. This is an illustration of the misuse of the science and practice of medicine, and it highlights the need to re-evaluate the role of the current biomedical model as dominating the mental-health scene. Alternative models, with a strong focus on human rights, experiences and relationships and which take social contexts into account, should be considered to advance current research and practice...”

B. Council of Europe

1. Council of Europe Parliamentary Assembly Recommendation 1235(1994) on psychiatry and human rights

75. The relevant part of Recommendation 1235(1994) on psychiatry and human rights of 12 April 1994 provides:

> “...
>
> 7. The Assembly therefore invites the Committee of Ministers to adopt a new recommendation based on the following rules:
>
> 7.1. Admission procedure and conditions:
>
> a. compulsory admission must be resorted to in exceptional cases only and must comply with the following criteria:
>
> there is a serious danger to the patient or to other persons;

an additional criterion could be that of the patient's treatment: if the absence of placement could lead to a deterioration or prevent the patient from receiving appropriate treatment;

b. in the event of compulsory admission, the decision regarding placement in a psychiatric institution must be taken by a judge and the placement period must be specified. Provision must be made for the placement decision to be regularly and automatically reviewed...

c. there must be legal provision for an appeal to be lodged against the decision...

(...)

7.4. Situation of detained persons:

(...)

c. ... the rules of ethics should be applied to detained persons and, in particular, medical confidentiality should be maintained in so far as this is compatible with the demands of detention..."

2. Recommendation Rec(2004)10 of the Committee of Ministers to member States concerning the protection of the human rights and dignity of persons with mental disorders

76. The relevant parts of Recommendation Rec(2004)10 of 22 September 2004 read as follows:

Article 4 – Civil and political rights

"1. Persons with mental disorder should be entitled to exercise all their civil and political rights.

2. Any restrictions to the exercise of those rights should be in conformity with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and should not be based on the mere fact that a person has a mental disorder."

Article 13 – Confidentiality and record-keeping

"1. All personal data relating to a person with mental disorder should be considered to be confidential. Such data may only be collected, processed and communicated according to the rules relating to professional confidentiality and personal data protection.

2. Clear and comprehensive medical and, where appropriate, administrative records should be maintained for all persons with mental disorder placed or treated for such a disorder. The conditions governing access to that information should be clearly specified by law."

3. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

77. The delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") visited Lithuania from 27 November to 4 December 2012. In its ensuing

report, published on 4 June 2014, and as regards Vilnius Psychiatric Hospital, the CPT noted:

“**C. Psychiatric establishments**

1. Preliminary remarks

89. In the course of the 2012 visit, the CPT visited for the first time Vilnius Republican Psychiatric Hospital. The visit was of a targeted nature, focusing on the application of means of restraint and the implementation in practice of legal safeguards for involuntary hospitalisation of civil psychiatric patients.

90. Vilnius Republican Psychiatric Hospital is the largest psychiatric institution in Lithuania, with an official capacity of 619 beds (distributed among fourteen in-patient units, both locked and open). At the time of the delegation’s visit, the establishment was accommodating 394 civil patients. Of them, seven had been placed there on an involuntary basis pursuant to [Article 28 of the Law on Mental Health Care]. The delegation was told that the average stay in the Hospital lasted 23 days.

91. From the outset, it should be emphasised that the delegation received no allegations – nor any other indications – of ill-treatment of patients by staff at Vilnius Republican Psychiatric Hospital.

2. Means of restraint

92. The restraint of violent psychiatric patients, who represent a danger to themselves or others, may exceptionally be necessary. However, this is a subject of particular concern to the CPT, given the potential for abuse and ill-treatment.

Reference should be made to the report on the CPT’s 2008 visit to Lithuania, in which the Committee set out some of its main standards in this area.

93. The restraint measures used at Vilnius Republican Psychiatric Hospital were manual, mechanical and chemical restraint, sometimes applied in combination. The delegation was informed that seclusion was not practised at the Hospital. Mechanical restraint was applied in two rooms (“observation rooms”) located in the intensive care unit, each of which was equipped with special beds for five-point fixation using belts with magnetic locks.

Both mechanical and chemical restraint measures had to be authorised by a doctor and were recorded in the patient’s (computerised) medical file. However, it was not always clear from the records for how long a patient had been restrained. Moreover, there was no central register at the Hospital for recording the use of means of restraint. The delegation was also concerned to learn that there was no continuous, direct and personal supervision of the patient’s condition during fixation. Instead, supervision was carried out by means of regular inspections (every 30 minutes) by a nurse and CCTV surveillance. It also appeared that a patient could on occasion be fixated in full view of another patient.

94. The CPT recalls that every instance of recourse to means of physical (manual), mechanical or chemical restraint should be recorded in a specific register (either paper-based or electronic) established for this purpose as well as in the patient’s file. The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the means and/or medication used, the name of the doctor who ordered or approved it, the names of the staff who participated in the application of the restraint measure, and an account of any injuries sustained by patients/residents or staff.

It is also essential that whenever a patient is subject to restraint, a qualified health-care staff member is continuously present in order to maintain the therapeutic alliance and provide assistance.

Contact is to be maintained in an appropriate way aiming at de-escalating the situation and discontinuing the measure. Clearly, video surveillance cannot replace such a continuous staff presence. Further, a restrained patient should not be exposed to other patients, unless he/she explicitly expresses a wish to remain in the company of a certain fellow patient.

Means of restraint should only be used for the shortest possible time (usually minutes to a few hours). When the emergency situation resulting in the application of restraint ceases to exist, the patient should be released immediately. Moreover, a debriefing with the patient should take place at the end of the application of any means of restraint. This debriefing will provide an opportunity for the doctor to explain the need for the measure and thus help relieve uncertainty about its rationale. For the patient, such debriefing provides an occasion to explain his/her emotions prior to the restraint, which may improve both the patient's own and the staff's understanding of his/her behaviour.

The CPT recommends that steps be taken at Vilnius Republican Psychiatric Hospital to ensure that the minimum standards set out above are applied whenever resort is had to means of restraint.

95. The CPT is very concerned to note that psychotropic medication – including haloperidol – was almost routinely administered to patients in the intensive care unit by means of direct intravenous injections (sometimes in very high doses), in order to control episodes of agitation and generally for prolonged periods (of up to ten days). Such a practice presents serious risks for the patients concerned (cardiac arrhythmias, low blood pressure, severe neurological reactions, coma, etc.) and should be used only very exceptionally, failing the use of oral (or, if necessary, intramuscular) medication and provided that there is close and continuous clinical monitoring (including ECG monitoring). The CPT recommends that the Lithuanian authorities review the aforementioned practice, in the light of the above remarks. [The CPT noted that haloperidol injections are not approved for intravenous administration in many countries because of the potentially fatal side effects].

3. Safeguards in the context of involuntary hospitalisation

96. In the reports on the 2004 and 2008 visits, the CPT had made a number of specific recommendations concerning the legal safeguards surrounding involuntary psychiatric hospitalisation of a civil nature. Regrettably, the findings made by the delegation during its visit to Vilnius Republican Psychiatric Hospital suggest that most of those recommendations have remained unimplemented.

97. The legal procedure relating to involuntary hospitalisation of civil psychiatric patients was described in the report on the CPT's 2004 visit. The information gathered by the delegation during the 2012 visit indicated that this procedure was duly followed at Vilnius Republican Psychiatric Hospital. It also transpired that as a rule patients subject to involuntary placement were represented by a lawyer. In this connection, the delegation was told by the Hospital's management that in most cases the assigned *ex officio* lawyer came to the Hospital to see and talk to the patient concerned.

98. However, it remained the case that judges usually ordered involuntary hospitalisation without ever having seen the patient concerned. In practice, their role

was often limited to simply carrying out a formal check of the documents submitted by the Hospital's administration.

Further, as far as the delegation could ascertain, judges were not required to (and in practice never did) seek an opinion from a psychiatrist outside the hospital concerned during civil involuntary placement procedures. As the CPT has stressed in the past, the procedure by which involuntary placement in a psychiatric establishment is decided should offer guarantees of independence and impartiality as well as of objective psychiatric expertise.

The CPT reiterates its recommendation that the Lithuanian authorities take steps to ensure that in the context of civil involuntary hospitalisation and extensions thereof:

- patients have the effective right to be heard in person by the judge (for this purpose, consideration may be given to the holding of hearings on hospital premises);

- the court always seeks an opinion from a psychiatrist who is not attached to the psychiatric institution admitting the patient concerned.

99. A number of recent court decisions on involuntary psychiatric hospitalisation were consulted by the delegation during the visit to the Hospital. It was struck by the fact that, whereas some of the decisions referred to the patient's (or his/her representative's) right to appeal against the decision (within seven days), others explicitly mentioned that they were not subject to appeal. The CPT would like to receive the observations of the Lithuanian authorities on this matter.

100. As already indicated in paragraph 90, at the time of the visit to the Hospital, only seven patients were formally considered as involuntary. However, from interviews with staff and patients, it became apparent that a number of "voluntary" patients were in fact not free to leave the hospital premises on their own and were thus *de facto* deprived of their liberty. Many of them were being accommodated in locked units and were only allowed to take outdoor walk at fixed times and when accompanied by staff. As the CPT made clear in the report on its 2008 visit, if it is considered that a given patient, who has been voluntarily admitted and who expresses a wish to leave the hospital, still requires inpatient care, then the involuntary civil placement procedure provided by the law should be fully applied.

The CPT recommends that the legal status of patients at Vilnius Republican Psychiatric Hospital be reviewed, in the light of the above remarks.

101. Lithuanian legislation still does not provide for a distinction between involuntary placement in a psychiatric institution and treatment without consent. The CPT wishes to stress once again that psychiatric patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorising treatment without his/her consent. Every competent patient, whether voluntary or involuntary, should be fully informed about the treatment which it is intended to prescribe and given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.

The CPT reiterates its recommendation that the Lithuanian authorities take steps - including of a legislative nature - to distinguish clearly between the procedure for involuntary placement in a psychiatric institution and the procedure for involuntary psychiatric treatment, in the light of the above remarks."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

78. In her application to the Court the applicant complained that the doctor at Vilnius Psychiatric Hospital, doctor D.Š., had disclosed information about her health and private life to the *Srovės* journalists and her mother. She relied on Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. The parties' arguments

(a) The Government

79. The Government firstly claimed that the applicant had not exhausted the available domestic remedies. In particular, she had not begun court proceedings against the journalists whose television show, *Srovės*, had been based on the interview with the applicant's psychiatrist, doctor D.Š. On that point the Government noted that domestic law allowed individuals to bring a claim directly against a producer and/or broadcaster of a television programme, irrespective of who else might have contributed to the dissemination of the information in question (see paragraph 72 above). Accordingly, and notwithstanding the applicant's belief that the breach of her right to privacy was linked to the actions of the psychiatrist, the impact on her privacy that she had purportedly experienced had been caused by the journalists and the television channel which had broadcast the *Srovės* programme. The Government also referred to several Supreme Court rulings from 2005 and argued that there was a plentiful amount of Lithuanian case-law showing that journalists could be brought to justice for breaching the right to privacy, proving that such an action was an effective remedy within the meaning of Article 35 of the Convention. It was therefore not reasonable to shift all the responsibility for the public dissemination of information which the applicant saw as concerning her private life to the hospital, or, all the more so, to the State, only because the applicant had chosen to bring her claim for responsibility against the hospital during the

domestic proceedings. The Government underlined that domestic law aimed at enabling plaintiffs to approach alleged violations of their rights in the most effective way, considering all the relevant factors showing wrongful behaviour. In this case, neither the hospital nor the psychiatrist had been able to control the scope of the information broadcast, in contrast to the actual broadcaster of that information.

80. In the alternative, the Government argued that the complaint was manifestly ill-founded.

(b) The applicant

81. In reply to the Government's arguments, the applicant submitted that she had had the right to decide whether to request compensation for damage from one or all of the persons who had disclosed information about her health, which fell into the sphere of her private life. Because of the complexity and considerable scope of the court proceedings against Vilnius Psychiatric Hospital, she had decided to seek compensation for breach of privacy from the hospital alone. The applicant noted that she had learned about the unlawful disclosure of information of a private nature by her psychiatrist, while she was being unlawfully held in the hospital. The fact that the psychiatrist had disclosed confidential information about her to the journalists and her mother had caused the applicant a tremendous shock, emotional suffering and distress. The subsequent dissemination of that information by the journalists had only increased the damage. In such a manner, the major breach of her right to privacy had been caused by the fact that a public hospital had revealed confidential information to the journalists. Lastly, the applicant relied on a Supreme Court ruling and implied that in the case of a breach of privacy a claim may be lodged against the person who disclosed confidential information, rather than the broadcaster who made that information public (she referred to *Varapnickaitė-Mažylienė v. Lithuania*, no. 20376/05, § 25, 17 January 2012).

2. The Court's assessment

82. The Court observes at the outset that in her application the applicant complained that Vilnius Psychiatric Hospital psychiatrist doctor D.Š. had disclosed information regarding the applicant's health and her private life to, firstly, the journalists from *Srovės*, and, secondly, to her mother (see paragraph 78 above). The Court further notes that the applicant voiced the same complaints in the Lithuanian courts, where, among numerous other grievances, she argued that Vilnius Psychiatric Hospital had been responsible for the breach of her right to privacy (see paragraphs 24 and 43 above). The applicant has also pleaded to the Court that the disclosure by the public hospital's psychiatrist of information about the applicant's health

led her to lose faith in the whole health-care system (see paragraph 87 below). In the particular circumstances of this case, the Court is therefore ready to accept the applicant's argument that she saw the hospital where the psychiatrist doctor D.Š. worked as primarily responsible for the breach of the applicant's right to privacy and that therefore she was not obliged to bring an action against the *Srovės* journalists who had made the interview with the psychiatrist public (also see *Sejdovic v. Italy* [GC], no. 56581/00, §§ 44 and 45, ECHR 2006-II).

83. Accordingly, the Government's objection of failure to exhaust domestic remedies by not bringing proceedings against the *Srovės* journalists or the LNK television channel must be dismissed.

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

B. Merits

1. The parties' arguments

(a) The applicant

85. The applicant noted at the outset that as a person being held at a psychiatric hospital her psychiatric diagnosis had formed a very important and sensitive aspect of her personal life. Her main argument, that the substance of the breach of privacy lay in the fact that the psychiatrist had disclosed such information to journalists and her mother, had not been given proper consideration by the domestic courts. Both the Court of Appeal and the Government had wrongly directed all their attention to the question of whether it had been possible to establish the applicant's identity from the *Srovės* broadcast.

86. The applicant emphasised that even though the psychiatrist, doctor D.Š., had not mentioned her by name when responding to the journalists' questions in front of camera, it had been obvious from her responses that the information had been provided with a specific person in mind. The psychiatrist had talked about a particular person's sexuality, about that person's studies in the United States and her affiliation with a non-traditional religious community (see paragraph 20 above). In fact, in the applicant's view, when questioned as a witness before the first-instance court, the psychiatrist had conceded that she had talked about the applicant with the journalists (see paragraph 34 above). The *Srovės* broadcast had also disclosed the applicant's psychiatric diagnosis – acute psychosis – which they or the applicant's mother could only have become aware of from the

psychiatrist, who was a State actor and could have anticipated that such information would be made more widely public.

87. The applicant also submitted that the fact that the journalists had known that she was being held at Vilnius Psychiatric Hospital prior to their arrival had not excused the psychiatrist from her duty to protect confidential information which amounted to a professional secret. When information about a person's mental health was confirmed in a broadcast by the psychiatrist in charge of treatment, it gained a completely different, higher, value, to information about someone's health revealed and discussed by a journalist or that person's mother alone. The psychiatrist had confirmed information about the applicant's health by her mere presence in the broadcast and by talking about the applicant, even if she had not mentioned her name. Furthermore, given that the psychiatrist had made certain statements about the applicant's sexuality (see paragraph 20 above), the impression had been created for viewers that she practised an amoral religion which breached the public order. Last but not least, finding out that doctor D.Š. had talked to journalists about the applicant's health without her consent had caused her a great shock, long-lasting uncertainty and emotional insecurity, as she had not known which other facts that the psychiatrist had forced out of her during their private conversations using psycho-correction methods had been revealed to the journalists. In the applicant's words, that had sowed a seed of distrust in doctors and psychiatrists.

88. In response to the Government's argument that it had been impossible to establish the applicant's identity from the *Srovės* broadcast, the applicant stated that, in fact, she found the opposite. The programme had revealed that she had studied in the United States, that her parents lived in Šiauliai, that her father was seriously ill, and that at the time of broadcast she lived in Vilnius and attended the Ojas Meditation Centre there. In addition, the applicant's mother and sister had appeared in the broadcast. Close friends, acquaintances and relatives knew her mother and sister and so the applicant's co-workers had been able to easily identify her as the person the psychiatrist had talked about. The applicant also submitted that she had been working at the time at the Ministry of Economy and the opinion had soon spread that she was a mental patient and a member of an amoral sect. All that had caused her great emotional and inner discomfort and had negatively affected her work environment and her psychological well-being. Lastly, she noted that her 14 August 2003 open letter to the *Srovės* journalists had only been published after the broadcast and that she had only done that in order to react to the programme's falsehoods and lies. Prior to the broadcast she had not made any information public about her mental state or former ailments.

89. Lastly, the applicant was dissatisfied that the hospital had disclosed information on her health to her mother, which the applicant considered to

constitute a separate breach of her right to privacy. As established by the domestic courts, as of 8 May 2003 the applicant had been conscious, clinical indications for compulsory medical help had been absent and she had been emotionally and mentally capable of taking decisions on her treatment. The applicant submitted that her mother had arrived at Vilnius Psychiatric Hospital on 9 May 2003, when the applicant had been conscious enough to take decisions on her own. The applicant had not given any authorisation to the psychiatrists to provide information about her to third parties, including her mother. At that time the applicant's relationship with her mother was very tense and complex, thus the applicant had not wished for her mother to get involved in her treatment. For the applicant, the fact that her mother had known of her earlier stays in hospital had not constituted grounds for the psychiatrists to provide information on her health and treatment and so they had breached their duty to act with due regard to protect professional secrecy.

(b) The Government

90. The Government firstly argued that there had been no interference with the applicant's private life. The domestic courts had duly examined her claims but had found no "substantial evidence" to hold that it had been possible to recognise her from the *Srovės* broadcast. In particular, for the Court of Appeal, there was a lack of features making it possible to confirm the applicant's identity during the broadcast. The Government also argued that the information provided by doctor D.Š. to the journalists had consisted of fairly abstract references to the applicant's studies for a master's in the United States, without giving details about those studies. It was fairly widely known in Lithuania at the relevant time that quite a lot of Lithuanian citizens were studying in the United States. According to Government statistics, 493 Lithuanian citizens studied at a higher education institution in the United States in 2001, 628 in 2002 and 647 in 2003. In fact, it had been the applicant's open letter of 14 August 2003 to the *Srovės* journalists that had exposed her, by divulging her name, surname, a detailed description of her treatment at psychiatric facilities and her participation in the Osho movement (see paragraphs 21-23 above). By explicitly identifying herself as the character "Violeta" depicted in the *Srovės* television broadcast, the applicant had herself publicly established a link between that character and herself.

91. Should the Court nevertheless find that there had been an interference with the applicant's right to her privacy, the Government argued that the information discussed in the television programme might be identified as contributing to a debate of general interest. The Government submitted that, after the collapse of the Soviet Union, Lithuanian society had experienced fundamental institutional, cultural and societal changes.

The influx of new religious movements had not been smooth due to impediments related to the relative sensitivity of religious attitudes in a transforming society. In fact, society's initial attitude to new religious movements had been rather negative. Among other reasons, that had been caused by a lack of information about those movements or by unfavourable coverage in the media. More thorough coverage was therefore necessary to establish a link between society, which was largely uninformed about such things, and new religious movements, the Osho movement being one of them. Taking into account the secrecy of that movement in Lithuania, as well as the controversy surrounding the registration of the Ojas Meditation Centre as a religious community, the *Srovės* programme had contributed to a debate of great public importance. Furthermore, even if the broadcast could be considered as "exaggeratedly provocative", that did not rebut its informational function because the local leader of the Osho movement in Lithuania, M.V., and close relatives of the applicant had been interviewed. It was the applicant's mother who had initiated the broadcast and she could be considered as a reliable source of information on that issue of public concern as the journalists had been keen to speak with relatives who provided their views on the issue openly.

92. Lastly, the Government turned to the applicant's complaint that Vilnius Psychiatric Hospital had disclosed the fact of the applicant's treatment at that hospital to her mother. The Government admitted that, if proven, such a disclosure would amount to a separate violation of Article 8 of the Convention. However, the first-instance court had merely established that the applicant's mother had already been aware of her daughter's aggravated condition on 7 May 2003, as well as of her being transported to the hospital for further treatment (see paragraph 33 above). The Court of Appeal had referred to the applicant's previous history of mental disorders, stating that the provision of information about the applicant's health to her relatives could not be considered as a violation of her privacy. Indeed, the applicant's mother had known of the applicant's prior treatment (see paragraph 48 above) and the disorder at issue had been similar in nature to the earlier episodes, especially because some of them had also clearly related to her religious activities (on this last point the Government referred to information in paragraph 6 above).

2. *The Court's assessment*

(a) General principles

93. The Court reiterates that personal information relating to a patient belongs to his or her private life (see, for example, *I. v. Finland*, no. 20511/03, § 35, 17 July 2008, and *L.L. v. France*, no. 7508/02, § 32, ECHR 2006-XI). The protection of personal data, not least medical data, is of fundamental importance to a person's enjoyment of his or her right to

respect for private and family life as guaranteed by Article 8 of the Convention. Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general (see *Z v. Finland*, 25 February 1997, § 95, *Reports of Judgments and Decisions* 1997-I; *P. and S. v. Poland*, no. 57375/08, § 128, 30 October 2012; and *L.H. v. Latvia*, no. 52019/07, § 56, 29 April 2014). Without such protection, those in need of medical assistance may be deterred from revealing such information of a personal and intimate nature as may be necessary in order to receive appropriate treatment and, even, from seeking such assistance, thereby endangering their own health and, in the case of transmissible diseases, that of the community. The domestic law must therefore afford appropriate safeguards to prevent any such communication or disclosure of personal health data as may be inconsistent with the guarantees in Article 8 of the Convention (see *Z v. Finland*, cited above, § 95).

94. The Court has also held that information about a person's sexual life (see *Dudgeon v. the United Kingdom*, 22 October 1981, § 41, Series A no. 45; *Biriuk v. Lithuania*, no. 23373/03, § 34, 25 November 2008; *Ion Cârstea v. Romania*, no. 20531/06, § 33, 28 October 2014; *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 191, ECHR 2016) as well as moral integrity (see *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 83, ECHR 2015 (extracts)) falls under Article 8 of the Convention. Likewise, information regarding a mental health related condition by its very nature constitutes highly sensitive personal data regardless of whether it is indicative of a particular medical diagnosis. Disclosure of such information falls therefore within the ambit of Article 8 (see, more recently, *Surikov v. Ukraine*, no. 42788/06, § 75, 26 January 2017).

95. The Court thus previously found that the disclosure – without a patient's consent – of medical records containing highly personal and sensitive data about a patient, including information relating to an abortion, by a clinic to the Social Insurance Office, and therefore to a wider circle of public servants, constituted an interference with the patient's right to respect for private life (see *M.S. v. Sweden*, 27 August 1997, § 35, *Reports* 1997-IV). The disclosure of medical data by medical institutions to a newspaper, to a prosecutor's office and to a patient's employer, and the collection of a patient's medical data by an institution responsible for monitoring the quality of medical care were also held to have constituted an interference with the right to respect for private life (see *Armonienė v. Lithuania*, no. 36919/02, § 44, 25 November 2008, also see *Fürst-Pfeifer v. Austria*, nos. 33677/10 and 52340/10, § 43, 17 May 2016; *Avilkina and Others v. Russia*, no. 1585/09, § 32, 6 June 2013; *Radu v. the Republic of*

Moldova, no. 50073/07, § 27, 15 April 2014; and *L.H. v. Latvia*, cited above, § 33; respectively).

(b) Application of these principles in the present case

(i) As to the scope of the Court's examination

96. The Court firstly notes that the applicant's grievance directly relates only to the actions of Vilnius Psychiatric Hospital and the psychiatrist doctor D.Š. in particular, whom the applicant saw as primarily responsible for the breach of her privacy and against whom she pursued court proceedings for damages at the domestic level (see paragraphs 24, 43 and 81 above). That being so, the Court considers that it is only required to examine the actions of those two actors as that was the main element underlying the applicant's complaint under Article 8 of the Convention. Although in their observations to the Court the Government laid much emphasis on the *Srovės* broadcast of 17 June 2003 (see paragraph 20 above), the Court will have regard to that programme and the journalists' actions only in so far as they provide the context for the aforementioned conduct by the hospital and its personnel. For the same reason, the Court also does not find the question of whether the applicant could have been recognised by viewers of the *Srovės* programme to be of critical importance, given that it is the matter of the hospital disclosing private information about the applicant to the journalists and her mother which is at the heart of the applicant's complaint.

(ii) Whether there was an interference with the applicant's right to respect for her private life

97. Although some of the circumstances of this case are not entirely clear, it transpires from the record of the Vilnius Regional Court's hearing that after the applicant had been admitted to Vilnius Psychiatric Hospital without her consent on 7 May 2003, her mother contacted the *Srovės* journalists and told them where the applicant was being held, but that she did not know her daughter's diagnosis (see paragraph 33 above). For her part, the psychiatrist, doctor D.Š., testified at the hearing that when the journalists had come to that hospital, she had been asked by the hospital's administration to meet them and told that the "talk would be about Mockutė" (see paragraph 34 above), an aspect of the case which the Court finds particularly disturbing. Even though doctor D.Š. denied to the Vilnius Regional Court that she had talked with the *Srovės* journalists about the applicant's health, that was overruled by that court, which held that the psychiatrist, without obtaining the applicant's consent, had revealed information to the journalists about her diagnosis, acute psychosis, the fact that she was being treated at that psychiatric hospital, and that she had studied in the United States (see paragraph 35 above). That conclusion does

not appear to have been overruled by the Court of Appeal, which only disagreed about the fact that the excerpts of the psychiatrist's interview shown during the broadcast had been sufficient to identify the applicant (see paragraph 47 above). The Court further observes that in one of those excerpts the psychiatrist used such statements as "it does not appear that this young woman would participate in orgies" and that "she is not hypersexual" (see paragraph 20 above). In this context it recalls the State's obligation to protect information about a person's sexual life and moral integrity (see the case-law in paragraph 94 above). In deciding whether there was interference with the applicant's right to respect for her privacy, the Court also notes that under the United Nations Convention on the Rights of Persons with Disabilities, which was adopted in 2007, the States' have a duty to protect persons with disabilities from unlawful attacks on their honour and reputation (see Article 22 of the CRDP, cited in paragraph 73 above). Examining further, the Court observes that the psychiatrist also discussed the applicant as manifesting secretive behaviour, which was a trait of those belonging to sects (see paragraph 20 above). At this juncture the Court is also mindful of the applicant's argument that she experienced emotional insecurity because she was afraid of which of the additional facts the psychiatrist had forced out of her might have been revealed to the journalists (see paragraph 87 *in fine* above; also see *Surikov*, cited above, § 75).

98. Lastly, the Court would add that it has not been contested that Vilnius Psychiatric Hospital is a public hospital and that the acts and omissions of its administration and medical staff were capable of engaging the responsibility of the respondent State under the Convention (see paragraph 11 *in fine* above, also see *Glass v. the United Kingdom*, no. 61827/00, § 71, ECHR 2004-II; *I. v. Finland*, cited above, § 35, and *Avilkina and Others*, cited above, § 31).

99. Having regard to those considerations, the Court finds that the disclosure by Vilnius Psychiatric Hospital psychiatrist doctor D.Š. to the *Srovės* journalists of highly personal and sensitive confidential information about the applicant, obtained during her involuntary hospitalisation and treatment at that hospital, entailed an interference with the applicant's right to respect for her private life guaranteed by paragraph 1 of Article 8.

100. Lastly, the Court turns to the applicant's complaint that Vilnius Psychiatric Hospital revealed information about her state of health to her mother. Although the Government disputed that such a disclosure had taken place, the Court notes that the Court of Appeal did not deny such a fact, but instead stated that Vilnius Psychiatric Hospital had been entitled to act in that way (see paragraph 48 above). Given the applicant's statements about her tense relationship with her mother (see paragraphs 21 and 89 above), the Court is also ready to concede that disclosure by Vilnius Psychiatric Hospital of information about the applicant's health to her mother,

whichever form it might have taken, also amounted to an interference with the applicant's right to respect for her private life.

(iii) Whether the interference was justified

101. The above-mentioned interference contravened Article 8 of the Convention unless it was "in accordance with the law" and pursued one or more of the legitimate aims referred to in paragraph 2 of that Article. The Court will examine each of these criteria in turn.

102. The Court notes that Lithuanian legislation provides for stringent obligations to ensure protection of patient privacy (see paragraphs 58-62 above). In particular, Article 14 of the Law on Mental Health Care at the material time stipulated that patients had a right to confidentiality with regard to information concerning their health, an obligation which extended to the doctors in charge of someone's treatment and to hospital administrations (see paragraph 59 above). In fact, Article 52 of the Law on the Health System explicitly forbade health-care specialists from violating the rules of confidentiality of information about a person's health which they had acquired in the course of their professional activity (see paragraph 60 above). Furthermore, under Articles 2 and 11 of the Law on the Legal Protection of Personal Data, information about a person's religious beliefs, health or sexual life was attributed particular protection, and it could only be released provided that the person had undisputably agreed to such disclosure (see paragraph 61 above). The duties to protect the confidentiality of all personal data relating to a person with disability, as well as to protect such persons from attacks on their honour or dignity, have been underlined within the framework of the United Nations and by Council of Europe institutions (see Article 22 of the CRPD, cited in paragraph 73 above, point 7.4.c of the Parliamentary Assembly Recommendation 1235(1994), cited in paragraph 75 above, and Article 13 of the Committee of Ministers Recommendation Rec(2004)10, cited in paragraph 76 above).

103. In the present case, the Court finds it clear that the applicant did not give her consent to doctor D.Š. or the Vilnius Psychiatric Hospital to discuss her state of health, her sexual life or her beliefs, either with the *Srovės* journalists, or with her mother. Furthermore, the Court fails to see what were the legal grounds justifying the release of such information, whether under Lithuanian law or under Article 8 § 2 of the Convention. In fact, the Court notes that all the relevant domestic and international law cited above expressly prohibits the disclosure of such information to the point that it even constitutes a criminal offence (see paragraph 62 above). Even if there were exceptions to the rule of non-disclosure, none of those have been argued by the Government, which instead pleaded a legitimate aim of informing society about new religious movements. The interference

with the applicant's right to respect for her private life was therefore not "in accordance with the law" within the meaning of Article 8 § 2 of the Convention.

104. Lastly, as to the legal basis for disclosing information related to the applicant's health to her mother, the Court observes that the Court of Appeal focused its analysis on the proportionality of the interference, in particular, on the fact that the applicant's mother had known of her history of mental troubles, without citing any legal basis for such a disclosure (see paragraph 48 above). The Government, asked explicitly by the Court to identify such a legal basis, did not specify one either (see *Radu*, cited above, § 29). That being so, and since no legal basis had been cited by the domestic courts, the Court cannot but hold that Vilnius Psychiatric Hospital's release of information about the applicant's health to her mother, whichever form it might have taken, was likewise not "in accordance with the law" within the meaning of Article 8 of the Convention.

105. As that is the case, the Court is not required to determine whether the interference pursued a legitimate aim and, if so, whether it was proportionate to the aim pursued (see *Y.Y. v. Russia,* no. 40378/06, § 59, 23 February 2016).

106. There has therefore been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

107. The applicant complained of a violation of her right to practise her religion on account of the restrictive environment at Vilnius Psychiatric Hospital and because the psychiatrists had persuaded her to have a critical attitude towards her religion. She relied on Article 9 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

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

B. Merits

1. *The parties' arguments*

(a) The applicant

109. The applicant submitted at the outset that meditation was a priceless part of her life, and that its value on the spiritual level was equal to that of water, fresh air and food on the physical one. While being held at the psychiatric hospital, she had been neither able to leave to go to the Ojas Meditation Centre to meditate nor practise meditation on her own at the psychiatric hospital because she needed privacy and a place (a room) to be by herself. The applicant also underlined that while being held unlawfully at the hospital doctors had used psycho-correction techniques aimed at bringing about a critical and negative attitude to her religion. Such facts had been confirmed by the Court of Appeal and were also apparent from her medical records. The psychiatrists' negative attitude towards her religion and the Ojas Meditation Centre itself had also been confirmed by doctor D.Š. during the *Srovės* broadcast. It was therefore illogical and irrational to argue, as the Government had done (see paragraph 114 below), that the psychiatrists had made it possible for her to practise such a religion while at the same time applying psycho-correction methods with respect to it.

110. The applicant also argued that there had been no link between her spirituality and her mental disorders. She admitted that her mental condition in 1992 could have been linked to her spiritual practices. However, the temporary disorders of 1994 had been caused by an intensive workload and her relationship with her mother – according to her, her medical file confirmed the existence of excessive maternal control (see paragraph 6 above). In 1996, she had suffered depression, while in 2002 she had had post-traumatic stress disorder, which had caused her to become mentally disorientated (see paragraph 8 above). There were no facts proving that her mental deficiencies of 2003 had been linked to her spiritual activities, except for the unfounded opinion of her mother that the applicant's mental disorder had related to her religion. In fact, within only two weeks of being released from Vilnius Psychiatric Hospital on 11 July 2003 the applicant had already felt well (see paragraph 23 above). From then on and until January 2016, when she had submitted observations to the Court, the applicant had had no mental health complaints, even though she meditated – practised her religion – daily. In fact, practising her religion inspired her and calmed her down.

111. The applicant also disputed the Government's references to psychiatric textbooks and articles (see paragraph 115 below) as misleading, abstract and vague for they were not related to specific facts of the case. Even assuming that her mental impairment had related to her spiritual practices, that would not mean that it was permissible to form a negative

attitude to a religion as such. The applicant found it hard to conceive of a situation where psychiatrists could get someone with a mental disorder which manifested itself when thinking about work or family to form a negative attitude towards those two aspects of life. It was also hard to imagine getting someone to form negative beliefs in a similar manner towards traditional religions, such as Christianity or Islam. In this particular case there was not a single medical record specifying why psycho-correction methods had been needed and how exactly the meditative religion practised by the applicant had harmed her mental health.

112. Lastly, the applicant pointed out that the Supreme Administrative Court had found that the Ojas Meditation Centre was not a danger to public safety, order, health and good morals and that on 4 February 2005 the Centre had eventually been registered as a religious community in Lithuania (see paragraph 56 above). By 2016 the Ojas Meditation Centre had been active in Lithuania for more than a decade, and there had been no information on any improper, illegal or socially unacceptable activities or practices because there simply were none.

(b) The Government

113. The Government acknowledged that the right to practise a religion in accordance with the Osho teaching fell within the scope of Article 9 of the Convention. They also did not deny that from 8 May 2003 the applicant had been held at Vilnius Psychiatric Hospital unlawfully, as established by both the Vilnius Regional Court and the Court of Appeal.

114. However, the Government argued that the applicant had had the opportunity to practise her religion at Vilnius Psychiatric Hospital, which had rooms suitable for patients to perform religious rites. For instance, there were “guest rooms” in all sections of the hospital, which were used for meetings between patients and relatives. Those rooms were accessible, stayed open between visits, and could also have been used to practise a religion, including meditating according to Osho teachings. In fact, the Court of Appeal found no evidence that the applicant had been subjected to any restrictions to exercise her religious beliefs (see paragraph 50 above).

115. The Government also submitted that the applicant’s mental health was directly linked to her religious activities. In that context, the Government relied on a number of academic articles, which in their view suggested the existence of a link between spirituality and health. Those publications, in the Government’s view, also advocated that mental disorders could be related to someone’s spiritual status. Therefore, even if Vilnius Psychiatric Hospital personnel had not prohibited the applicant from meditating, she had been encouraged to do that in line with the state of her health. The Government also noted that the applicant’s case was a particular one owing to the persistent link between her mental disorders and her

spirituality, which, according to her medical records, had also occurred previously and had been related to other religious groups, not the Osho movement. The Government did not suggest that all the applicant's mental disorders were related exclusively to her spiritual activities. However, the recurrence of such a link might have determined a more rigorous approach by the psychiatrists when considering the applicant's approach to religion.

116. The Government also noted that according to the experts the applicant had had a transitory psychotic disorder from 8 May 2003 until 26 June 2003 (see paragraph 18 above), and it was not for the Court to substitute its own assessment of the facts (the Government relied on *Elsholz v. Germany* [GC], no. 25735/94, § 66, ECHR 2000-VIII, and *Donohoe v. Ireland*, no. 19165/08, § 73, 12 December 2013). Even though the domestic courts had confirmed the illegality of the applicant's stay at Vilnius Psychiatric Hospital, the applicant's claim of allegedly improper medical treatment had been rejected by the Court of Appeal (see paragraph 51 above). In fact, the psychiatrists' actions and methods applied when treating the applicant had been in line with the existing legislation and legal acts. The Government also drew an analogy with the Court's case-law under Article 3 of the Convention, where it had held that it was for the medical authorities to decide on the therapeutic methods to be used to preserve the physical and mental health of patients (they relied on *Herczegfalvy v. Austria*, 24 September 1992, § 82, Series A no. 244). Even though the case at issue was of a different nature, the Government suggested that a similar approach could be followed. The priorities of medical science and the professional application of medical methods should prevail over the wishes of an individual to choose his or her own way of behaving, unless abusive conduct by medical personnel was clearly established, which had obviously not been the case here. In the instant case, the psycho-correction methods applied by the psychiatrists had been used in order "to form a *critical*, not a negative, attitude towards religion" (emphasised by the Government).

2. *The Court's assessment*

(a) General principles

117. The Court reiterates that freedom of thought, conscience and religion, as enshrined in Article 9, is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a

religion (see *Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260-A, and *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999-I).

118. In democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on freedom of thought, conscience and religion in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected (see *Kokkinakis*, cited above, § 33). The Court has frequently emphasised the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and stated that this role is conducive to public order, religious harmony and tolerance in a democratic society. It also considers that the State's duty of neutrality and impartiality is incompatible with any power on the State's part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 107, ECHR 2005-XI, and the case-law cited therein). The Court has also held that the State enjoys only a limited margin of appreciation and must advance convincing and compelling reasons to justify any interference with the freedom of individual conscience (see *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, § 76, ECHR 2006-XI; also see, *mutatis mutandis*, *Bayatyan v. Armenia* [GC], no. 23459/03, § 123, ECHR 2011). That limited margin of appreciation goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts (see *Moscow Branch of the Salvation Army*, cited above, § 76).

119. The Court reiterates that freedom to manifest one's religious beliefs comprises also a negative aspect, namely the right of individuals not to be required to reveal their faith or religious beliefs and not to be compelled to assume a stance from which it may be inferred whether or not they have such beliefs (see *Alexandridis v. Greece*, no. 19516/06, § 38, 21 February 2008, and *Grzelak v. Poland*, no. 7710/02, § 87, 15 June 2010). Consequently, State authorities are not entitled to intervene in the sphere of an individual's freedom of conscience and to seek to discover his or her religious beliefs or oblige him or her to disclose such beliefs (see *Alexandridis*, cited above, § 38, and *Sinan Işık v. Turkey*, no. 21924/05, § 41, ECHR 2010). The Court has also emphasised the primary importance of the right to freedom of thought, conscience and religion and the fact that a State cannot dictate what a person believes or take coercive steps to make him change his beliefs (see *Ivanova v. Bulgaria*, no. 52435/99, § 79, 12 April 2007).

120. The Court has also held that while religious freedom is primarily a matter of individual conscience, it also implies freedom to manifest one's religion alone and in private or in community with others, in public and

within the circle of those whose faith one shares (see *Sinan Işık*, cited above, § 38).

(b) Application of the general principles to the instant case

(i) On the existence of an interference

121. The Court firstly notes that the Government did acknowledge that the right to practise one's religion in accordance with the Osho teaching fell within the scope of Article 9 of the Convention (see paragraph 113 above). The Court has no reason to hold otherwise, all the more so since pursuant to the Supreme Administrative Court's decision the Ojas Meditation Center had been registered as a religious community (see paragraph 56 above; also see *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 68, ECHR 2016). Indeed, and although a State actor – Vilnius Psychiatric Hospital – during the domestic court proceedings in the applicant's case prayed in aid that the lack of recognition of the Osho movement as religion in Lithuania in 2003 deprived individual adherents of that religion of the protection of Article 9, the Court cannot share such a suggestion (see paragraphs 25, 42 and 98 above). To hold so would mean that the State could exclude certain beliefs by withholding recognition. The Court has already held that punishing those who manifest religious beliefs which have not been recognised by the State constitutes a violation of Article 9 (see *Masaev v. Moldova*, no. 6303/05, § 26, 12 May 2009).

122. The Court has regard to the applicant's claims about interference with her right to practise Osho teaching whilst being held at Vilnius Psychiatric Hospital, those allegations having been supported by the first instance court's findings (see paragraph 37 above). The applicant's claims were however contested by the Government, which, in turn, relied on the conclusions by the Court of Appeal and asserted that the applicant had been able to practise her religion during her stay at that institution (see paragraph 50 above). The Court therefore finds that it has been presented with diverging accounts of the applicant's factual situation in Vilnius Psychiatric Hospital. The Court points out that in principle it is not its task to substitute its own assessment of the facts for that of the domestic courts (see *Kyriacou Tsiakkourmas and Others v. Turkey*, no. 13320/02, § 165, 2 June 2015, and *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 169, ECHR 2015). Even so, the Court has already held that, in a situation like this, it remains free to itself evaluate the facts in the light of all the material at its disposal (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336, and *Alexandridis*, cited above, § 34; also see *Klimov v. Russia*, no. 54436/14, § 64, 4 October 2016; *Idalov v. Russia (no. 2)*, no. 41858/08, § 99 *in fine*, 13 December 2016). It has also held that the position of inferiority and powerlessness which is typical of patients confined in psychiatric hospitals calls for increased vigilance in

reviewing whether the Convention has been complied with (see *Herczegfalvy*, cited above, § 82).

123. Examining further, the Court turns to the applicant's twofold argument that at Vilnius Psychiatric Hospital she had been prevented from practicing her religion, firstly, because of restrictive regime therein, and, secondly, because of the doctors' unsympathetic views towards her beliefs. The Court notes that, after the applicant was placed in Vilnius Psychiatric Hospital, she was forcibly administered drugs, physically restrained, and various restrictive treatment regimes were applied to her during the fifty-two days of her stay at that institution (see paragraphs 12 and 14-18 above; on the issue of the consent to treatment, or lack of it in the applicant's case, also see paragraphs 38 and 51 above; also see point 101 of the CPT report, cited in paragraph 77 above). The Government have not suggested that the applicant could have left the hospital to practise her religion with the circle of people with whom she shared it, even though she had clearly indicated to the psychiatrists that attending the Ojas Meditation Center "brought her peace" (see paragraphs 15, 23 and 57 above; also see *Kokkinakis*, cited above, § 31 and *Sinan Işık*, cited above, § 38). In fact, the Vilnius Regional Court, which also relied on the CPT standards, had clearly ruled out any possibility for the applicant to leave the hospital for 52 days of her stay therein (see paragraphs 30 and 31 above). This view also appears to be corroborated by the CPT, which, having reviewed the situation at Vilnius Psychiatric Hospital in general, noted that although only few patients therein were formally considered as involuntary, in reality even "voluntary" patients were not free to leave (see point 100 of the CPT report, cited in paragraph 77 above). It is also plain from the applicant's statements in her open letter (see paragraph 22 above) and in those made to the domestic court (see paragraph 43 above), to this Court (see paragraph 109 above), as well as from her medical records and other documents (see paragraphs 15, 17, 37, 42 and 50 above), that in Vilnius Psychiatric Hospital she had to submit and subordinate her wishes to unyielding authority of the psychiatrists who were trying to "correct" the applicant so that she abandoned her "fictitious" religion, and whom she felt constrained to obey, even on pain of receiving a diagnosis which would make her unemployable (on the issue of undue influence and freedom of religion see *Larissis and Others v. Greece*, 24 February 1998, §§ 38 and 45, 51-53, *Reports* 1998-I; also see the extracts from the Lithuanian Constitutional Court's ruling in paragraph 65 above). The applicant therefore has demonstrated that pressure was exerted on her to change her religious beliefs and prevent her from manifesting them (see, *mutatis mutandis*, *Bayatyan*, cited above, §§ 36 and 112).

124. Furthermore, and even though the Government argued that the medical treatment which the applicant received at Vilnius Psychiatric Hospital was not inappropriate under domestic standards (see paragraphs 51

and 116 above), the Court does not find the Government's arguments to be decisive. While it is for the medical authorities to decide on the therapeutic methods to be used, if necessary by force, to preserve the physical and mental health of patients who are entirely incapable of deciding for themselves, the Court must nevertheless satisfy itself that the medical necessity has been convincingly shown to exist (see *Herczegfalvy*, cited above, § 82). In this case the psychiatrists who attended to the applicant admitted themselves that the applicant's life "had not been in danger" for all fifty-two days of her stay at the Vilnius Psychiatric hospital. This view was also confirmed by the court-appointed experts (see paragraph 31 above).

125. The Court lastly turns to the Government's argument about the need for a public discussion in Lithuania about new religions after the collapse of the Soviet Union (see paragraph 91 above). Be that as it may, it recalls having already had an occasion to examine a case concerning the applicant associations', who were religious associations or meditation associations belonging to the Osho movement, complaint that the information campaign by the respondent Government had aimed to denigrate the Osho movement's teachings (see *Leela Förderkreis e.V. and Others v. Germany*, no. 58911/00, §§ 70 and 71, 6 November 2008). The Court does not fail to observe that in that case it acknowledged that the applicant associations retained their freedom of religion, both as regards their freedom of conscience and the freedom to manifest their beliefs through worship and practice. Even so, given that the terms used to describe the applicant associations' movement, such as "sects", "psycho-sects", "cults" or similar, may have had negative consequences for them, in that case the Court thus proceeded its analysis on the premise that such labelling constituted an interference with the applicant associations' right to manifest their religion or belief, as guaranteed by Article 9 § 1 of the Convention (ibid., §§ 83 and 84). The Court then ultimately accepted, with certain provisos, that the German Government's public campaign in no way amounted to a prohibition of the applicant associations' freedom to manifest their religion or belief (ibid., §§ 100 and 101). That being so, the Court finds that the circumstances examined in the instant case, which concerns the applicant who was an individual with a history of mental troubles, and in a particularly vulnerable situation under effective control of the psychiatrists who worked on her with the view that she became critical towards her religion, were therefore more grim than those examined in *Leela Förderkreis e.V. and Others* where the applicants were a group of religious associations or meditation associations, and thus all the more so amounted to an interference with the applicant's rights under Article 9 of the Convention.

126. In the light of the foregoing, the Court holds that there has been an interference with the applicant's right to respect for her religion.

(ii) Whether the interference was justified

127. The above-mentioned interference contravened Article 9 of the Convention unless it was "prescribed by law", pursued one or more of the legitimate aims referred to in paragraph 2 of that Article and was "necessary in a democratic society" for achieving such aim or aims.

128. In the present case, however, it is sufficient to note that, except for the first day of her involuntary hospitalisation, the applicant was held at Vilnius Psychiatric Hospital unlawfully (see paragraphs 29-32 and 45 above). Given that the applicant's psycho-correction treatment lasted longer than 7-8 May 2003 (see paragraph 29 above) and, in fact, continued throughout her stay at that institution, the Court finds that the interference was not "prescribed by law". In the context of the lawfulness of involuntary psychiatric detention, the Court also notes the CPT report which details numerous drawbacks related to the authorisation for holding a person in a psychiatric hospital, including the Vilnius Psychiatric Hospital where the applicant had been held, including the lack of appropriate judicial involvement (see points 96, 98 and 99 of the CPT report, cited in paragraph 77 above). The need for judicial approval for compulsory admission and continued placement at the psychiatric institution has also been underlined by the Parliamentary Assembly of the Council of Europe (see point 7.1.b of the Recommendation 1235(1994), cited in paragraph 75 above; also see the extract from United Nations Special Rapporteur Mr D. Pūras' report in paragraph 74 above, regarding the practice of deprivation of liberty in closed psychiatric institutions). In this particular case, the Vilnius Regional Court and the Court of Appeal both concluded that domestic legal procedures for the applicant's forced hospitalisation and treatment had not only been breached, but outright disregarded (see paragraphs 32 and 45 above).

129. The Court also attaches weight to the fact that, under the Lithuanian Constitution and the Constitutional Court's case-law, freedom of religion becomes a matter of legal regulation only to the extent that an individual expresses his or her thoughts or religion by actions, and that, as long as a person has a religion or faith, it falls within the inviolable sphere of private life and may not be limited in any way (see paragraphs 64 and 65 above). Regarding the situation of the applicant in the instant case, the Court is prepared to accept that the needs of psychiatric treatment might necessitate discussing various matters, including religion, with a patient, when he or she is being treated by a psychiatrist. That being so, it does not transpire from Lithuanian law that such discussions might also take the form of psychiatrists prying into the patients' beliefs in order to "correct" them when there is no clear and imminent risk that such beliefs will manifest in actions dangerous to the patient or others (in this context see, *mutatis mutandis*, *Biblical Centre of the Chuvash Republic v. Russia*, no. 33203/08,

§ 57, 12 June 2014). On this last point, the Court refers to its earlier finding that the applicant's behaviour did not require her hospitalisation after 8 May 2003 (see paragraph 128 *in limine* above). The Court further reiterates the principle of the States' limited margin of appreciation to justify interference with the freedom of individual conscience (see paragraph 118 above). Notwithstanding that limited margin of appreciation which is applicable to manifestation of religious beliefs, the Court has also emphasised the primary importance of the right to freedom of thought, conscience and religion and the fact that a State cannot dictate what a person believes or take coercive steps to make him change his beliefs (see *Ivanova*, cited above, § 79 *in fine*; also see paragraph 119 above). Lastly, the Court has never held in its case-law that the scope of the States' margin of appreciation could be broader or narrower depending on the nature of the religious beliefs.

130. Where it has been shown that an interference was not in accordance with the law, it is not necessary to investigate whether it also pursued a "legitimate aim" or was "necessary in a democratic society" (see *Church of Scientology of St Petersburg and Others v. Russia*, no. 47191/06, § 47, 2 October 2014).

131. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 9 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

132. 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

133. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage for the violation of her right to respect for her right to privacy and EUR 5,000 for the violation of her right to freedom of religion.

134. The Government disputed the claims as far too excessive, wholly unreasoned and unsubstantiated.

135. The Court notes that it has found a violation of Articles 8 and 9 of the Convention in that the Lithuanian authorities failed to secure the applicant's right to respect for her private life and religion. The Court considers that the applicant must have suffered distress and anxiety which the finding of a violation of the Convention in this judgment does not

suffice to remedy. Ruling on an equitable basis, as required by Article 41, the Court awards the applicant EUR 8,000 for non-pecuniary damage.

B. Costs and expenses

136. The applicant also claimed EUR 900 for the costs and expenses incurred before the Court.

137. The Government agreed that the claim for legal costs and expenses should be approved if the Court found violations of Articles 8 and 9 of the Convention.

138. 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 have been 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 grants the applicant's claim in full.

C. Default interest

139. 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,

1. *Declares*, unanimously, the application admissible;

2. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention;

3. *Holds*, by five votes to two, that there has been a violation of Article 9 of the Convention;

4. *Holds*, by six votes to one,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:
      (i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 900 (nine hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

Done in English, and notified in writing on 27 February 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

Ganna Yudkivska
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint partly dissenting opinion of Judges Yudkivska and Ranzoni is annexed to this judgment.

G.Y.
M.T.

JOINT PARTLY DISSENTING OPINION OF JUDGES YUDKIVSKA AND RANZONI

1. We have voted with our colleagues in favour of finding a violation of Article 8 of the Convention. Our disagreement with the judgment relates to the finding of a violation of Article 9.

2. The present case can be summarised as follows. In 2003 the applicant, who at the time was 30 years old and had a long history of mental problems, after a mental breakdown was forcibly placed in a psychiatric hospital, where she spent 52 days. While being held there, psychiatrists disclosed information about the applicant's health and private life to a journalist as well as information about her health and treatment to her mother. In a subsequent television programme, parts of this information were released. The applicant furthermore claimed that the regime at the psychiatric hospital did not allow her to practise the religion of the Ojas Meditation Centre, the Lithuanian branch of the Osho religious movement, and that the psychiatrists had worked on her to convince her to be critical of her non-traditional religion.

3. We agree with the majority that the disclosure of information by the psychiatric hospital to a journalist and to the applicant's mother entailed an interference with her right to respect for her private life which lacked a legal basis under Lithuanian legislation and therefore violated Article 8 of the Convention. Where we differ from the majority is in their assessment of the Article 9 complaint. To our mind, the applicant's treatment in the psychiatric hospital did not interfere with her freedom of religion as protected by this provision.

4. Our disagreement with the majority lies in their assessment of the relevant facts of the present case and the applicant's treatment at the psychiatric hospital. Moreover, we have some issues with the methodology applied in the judgment.

I. Assessment of facts

5. At the outset, we would observe that the Article 9 complaint cannot be assessed without taking due account of the concrete circumstances of the specific case and the setting in which the interference with the applicant's freedom of religion allegedly occurred. In our view, her claims at domestic level concerned, apart from the lawfulness of the restriction of her liberty, her psychiatric treatment first and foremost. Therefore, the applicant's complaint should be seen in a broader context, namely as a complaint about the alleged improper treatment at a psychiatric hospital, whereas the religious aspect represents only one part thereof.

6. However, we agree with the majority's assessment in paragraph 121 of the judgment that the applicant's beliefs according to the Osho movement fell within the ambit of Article 9. If domestic authorities recognise the religious aspect of someone's beliefs, the Court should accept that and, if not made indispensable by the circumstances of a given case, abstain from assessing itself whether or not a specific belief is to be seen as a "religious" one. In the present case, this fact was established at domestic level.

7. Other facts have likewise been convincingly established at domestic level, but disregarded by the majority. Here we come to the core of our disagreement with the judgment.

8. The following facts were undisputed. The applicant between 1992 and 2002, on several occasions, was treated in psychiatric hospitals for acute paranoid psychosis, paranoia, endogenous depression and post-traumatic stress disorder (see paragraphs 6-8 of the judgment). The first hospitalisation took place after the applicant had joined a religious community. Later in the same year she joined another religious group. According to the psychiatrists, her condition worsened after participating in certain "religious" activities in a forest (see paragraph 6). The applicant admitted that her mental condition in 1992 could have been linked to her spiritual practices (see paragraph 110). In February 2003 the applicant made her first visit to the Ojas Meditation Centre. Three months later, at work, she suddenly felt exhausted and agitated, drove home, left her car in the middle of the street, returned to her apartment, undressed completely, and began screaming on her balcony. Subsequently, she had to be taken by force to a psychiatric hospital, and was later diagnosed with a transitory psychotic disorder, a serious mental illness (see paragraphs 10-11 and 18).

9. As far as the treatment in the psychiatric hospital and the psychiatrists' attitude towards the applicant is concerned, the Court's judgment deviated from the assessment made by the Court of Appeal. The majority, to our mind, wrongly found that the Strasbourg Court had been presented with "diverging accounts of the applicant's factual situation" in the psychiatric hospital, and continued to evaluate the facts in a manner we cannot agree with (see paragraph 122).

10. It is true that the Regional Court had found "valid the applicant's complaints that the doctors had tried to dissuade ... her from meditating, attempted to alter her views on non-traditional, meditation religion and had treated her against meditating and attending the Ojas Meditation Centre" (see paragraph 37). However, the Court of Appeal overruled the first instance court and its assessment of facts, and itself established the relevant facts concerning the applicant's treatment in the psychiatric hospital. It found "no evidence in the file that the applicant had been forbidden from performing religious rites" and "no information that any restrictions had been applied to her" (see paragraph 50). The Government, before the Court, relied on the conclusions of the Court of Appeal, asserting that the applicant

had been able to practise her religion during her stay at the psychiatric hospital (ibid.).

11. Against this background, it cannot be said that, in respect of the domestic court's assessment and the Governments assertions, there existed "diverging accounts" of the applicant's situation which allowed the Court to freely evaluate the facts itself. On the contrary, it would require cogent elements to lead it to depart from the Court of Appeal's findings of fact. However, such elements were lacking in the present case, and no evidential material has been adduced before this Court which could call into question the findings of the Court of Appeal and add weight to the applicant's allegations, which were disputed by the Government. As the Court has reiterated on many occasions, it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case. As a general rule, where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and it is for the latter to establish the facts on the basis of the evidence before them (see, for example, *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 169, ECHR 2015, and *Austin and Others v. the United Kingdom* [GC], nos. 39692/09, 40713/09 and 41008/09, § 61, ECHR 2012).

12. The majority, in paragraph 123 of the judgment, carried on substituting their own assessment of the facts for that of the Court of Appeal. Even if the conditions for this approach were fulfilled, in assessing evidence the Court adopts the standard of proof "beyond reasonable doubt" (see *Creangă v. Romania* [GC], no. 29226/03, § 88, 23 February 2012, and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII). However, in the circumstances of the present case such an evidential basis was lacking. In our opinion, the majority's assessment of facts was inaccurate and their conclusions did not meet the required level of proof. Rather, the majority, in an uncritical manner, took the applicant's own assertions for granted and relied again on the Regional Court's judgment, although that judgment was quashed by the Court of Appeal, which disagreed with how the lower court had established the relevant facts. Therefore, we cannot accept the majority's finding in the said paragraph that the applicant "has demonstrated that pressure was exerted on her to change her religious beliefs and prevent her from manifesting them". Neither of these elements was proven beyond reasonable doubt.

13. First, the applicant was not pressured to change her religious beliefs, but her treatment was based on her completely uncritical attitude towards those beliefs and, in particular, towards her psychotic behaviour. This is clear from the medical records (see paragraphs 15-18 of the judgment) and concurs with the Government's observations (see paragraph 116). The psychiatrists obviously wanted the applicant to reflect on her own mind and behaviour, and such reflection naturally forms part of psychiatric treatment.

In a setting of compulsory treatment it seems evident that the patient, at least to some extent, has to "submit and subordinate her wishes to the authority of the psychiatrists". After all, that is what psychiatric treatment is about. The applicant's attitude towards her beliefs had to be addressed in order to find out the causes of her psychotic behaviour and her serious mental disorder, particularly in view of the several previous psychiatric treatments she had already undergone and which, at least in part, related to her spiritual practices. Any possible ground and reason for a person's mental problems needs to be addressed in psychiatric treatment, whether relating to personality, business, sport, other leisure activities or beliefs, be it religious or non-religious beliefs. Furthermore, the Court has acknowledged in its case-law that, in principle, it is for the domestic medical authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used to preserve the physical and mental health of patients who are incapable of deciding for themselves, and for whom they are therefore responsible (see, *inter alia*, *Dvořáček v. Czech Republic*, no. 12927/13, § 88, 6 November 2014, and *Herczegfalvy v. Austria*, 24 September 1992, § 82, Series A no. 244).

14. Secondly, at the psychiatric hospital the applicant was not prevented from practising her religion. She was not forbidden from doing so, and there were no restrictions applied to her (see paragraph 50). The applicant has not produced sufficiently detailed and credible evidence to the contrary. The majority, from the fact that there was a "restrictive regime" at the hospital and that the applicant could not leave its premises for 52 days, seem to draw the untenable inference that she could not practise her religion. However, a restrictive regime in a psychiatric hospital was not of itself problematic under Article 9 as long as the applicant, within the institution, could practise her religious beliefs, as she was actually able to do. Practising a religion is possible in many different ways and situations, even when someone is confined for medical reasons. If this were not so, each deprivation of liberty would automatically entail a violation of a detainee's Article 9 rights (see in this respect *Süveges v. Hungary*, no. 50255/12, 5 January 2016, where the Court found that a restriction on attending religious ceremonies was a direct consequence of the applicant being put under house arrest, and was satisfied that the interference with his "confessional rights" was not such as to impair the very essence of his rights under Article 9 of the Convention).

15. In paragraph 124 of the judgment the majority added another argument, which does not sit well with the Court's case-law. We agree with their initial statement that "while it is for the medical authorities to decide on the therapeutic methods to be used, if necessary by force, to preserve the physical and mental health of patients who are entirely incapable of deciding for themselves, the Court must nevertheless satisfy itself that the medical necessity has been convincingly shown to exist". However, the majority then continued by observing that the applicant's life had not been

in danger for the whole period of her stay in the psychiatric hospital, thereby insinuating that her medical treatment, due to the lack of such a danger, had not been shown to be appropriate. We cannot agree with placing the threshold of therapeutic necessity as high as a risk to life, because psychiatric treatment to address a less serious form of physical or psychological risk may, and often does, also constitute such a necessity.

II. Methodology

16. In this regard, we would like to comment on the methodology applied in the judgment in three different aspects.

17. First, in paragraph 122 the majority, in order to justify their liberty to evaluate the facts themselves, referred to case-law which allegedly related to a "situation like this". However, most of the judgments cited had been taken in the context of Article 3 of the Convention, where the Court held (see, for example, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336) that its "scrutiny must be particularly thorough" and that its "vigilance must be heightened when dealing with rights such as those set forth in Article 3 ..., which prohibits in absolute terms torture and inhuman or degrading treatment or punishment". In contrast, the context of the present case, dealing with an Article 9 complaint, is completely different and does not justify either applying "particular scrutiny" or deviating from the relevant domestic court's findings without cogent elements.

It is also particularly vivid in paragraph 124, where the majority rely on the case of *Herczegfalvy v. Austria* (cited above, § 82) in which, replying to the applicant's complaint about forced administration of food and neuroleptics and handcuffing to a security bed, the Court stressed that while it was for the medical authorities to decide on the therapeutic methods to be used to preserve the physical and mental health of patients who were entirely incapable of deciding for themselves, "such patients nevertheless remain[ed] under the protection of Article 3, whose requirements permit[ted] of no derogation". The present case is obviously different.

Likewise, the reference, in paragraph 122 of the judgment, to *Alexandridis v. Greece* (no. 19516/06, § 34, 21 February 2008) does not justify a departure from the Court of Appeal's findings. Although the cited case was examined under Article 9, the situation was, again, completely different in so far as the disputed facts had not been established by a court and, additionally, the Government's submissions had been contradictory.

18. Secondly, the majority in paragraphs 118 and 129 held that the State enjoyed only a "limited margin of appreciation" to justify an interference with the right to manifest one's religious beliefs.

In this respect, we note that the reference to the margin of appreciation was basically superfluous in the present case because this principle only

comes into play when the Court assesses whether or not a lawful interference is proportionate. However, the majority found that the interference was not "prescribed by law", and therefore they did not enter at all into any necessity or proportionality analysis.

Further, even if the principle were applicable, according to the Court's case-law under Article 9, the margin of appreciation would not be "limited". In this respect, the majority refer to two judgments, which however do not support their view. In *Moscow Branch of the Salvation Army v. Russia* (no. 72881/01, § 76, ECHR 2006-XI) the statement of the "limited" margin was made only in relation to the rule of freedom of association and in particular in the context of Article 11. That can be deduced from the references to *Gorzelik and Others v. Poland* ([GC], no. 44158/98, § 95, ECHR 2004-I), *Sidiropoulos and Others v. Greece* (10 July 1998, § 40, Reports of Judgments and Decisions 1998-IV) and *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (nos. 29221/95 and 29225/95, § 84, ECHR 2001-IX) which were all Article 11 cases. The second judgment mentioned by the majority, *Bayatyan v. Armenia* ([GC], no. 23459/03, § 123, ECHR 2011), concerned an Article 9 case, but the narrow margin of appreciation was applied in that case only because there was an established consensus against the respondent State's position. There was clearly no intention to apply such a limited margin of appreciation in any Article 9 context. On the contrary, the Court in the recent Grand Chamber judgment *S.A.S. v. France* (no. 43835/17, § 129, ECHR 2014) unequivocally held that, as regards Article 9, the State should in principle be afforded a wide margin of appreciation in deciding whether and to what extent a limitation of the right to manifest one's religion or beliefs is "necessary".

19. Thirdly, we cannot but mention the majority's very limited analysis of the justification for the interference at stake. The conclusion that the interference with the applicant's right to respect for her religion was not in accordance with the law was based on (i) the involuntary nature of the applicant's hospitalisation (see paragraph 128), which is not a matter to be discussed under Article 9 of the Convention; and (ii) the fact that the domestic law does not prescribe that psychiatrists can "[pry] into the patients' beliefs in order to 'correct' them when there is no clear and imminent risk that such beliefs will manifest in actions dangerous to the patients or others" (see paragraph 129). On the later point we find, as argued above, that any attempt to "correct" or change the applicant's beliefs was not proven in the present case, and furthermore it was not at all shown that the psychiatrists in the psychiatric hospital had deviated from the prescribed medical protocol in the applicant's particular situation.

III. Conclusion

20. For the reasons set out above, the applicant's treatment in the psychiatric hospital, in our opinion, did not constitute an interference with her freedom of religion as protected by Article 9 of the Convention. Therefore, we have voted against the finding of a violation of this provision.

21. Consequently, Judge Ranzoni has likewise voted against point 4 of the operative part of the judgment. The applicant claimed 3,000 euros in respect of non-pecuniary damage for the violation of Article 8 of the Convention. Based on his view that there has been no violation of Article 9, and in applying the *ne ultra petitum* ("not beyond the request") principle, only that amount, in his opinion, could have been awarded.