

MDAC hails compensation "milestone for global human rights"

11 March 2010, Budapest (Hungary), St. Petersburg (Russia) and Strasbourg (France). MDAC welcomes last week's judgment of the European Court of Human Rights which ordered the Russian government to pay 25,000 EUR compensation to a man with mental health disabilities who was unlawfully deprived of legal capacity and arbitrarily detained in a psychiatric hospital for more than six months. This is the largest amount of compensation the Court has ever awarded in a disability rights case.

The Mental Disability Advocacy Center today welcomes the 4 March 2010 European Court of Human Rights judgment which ordered the Russian government to pay 25,000 EUR damages to MDAC's client Pavel Shtukaturov. The judgment follows a judgment on the merits issued by the same court in March 2008, which found that Russia was in violation of several provisions of the European Convention on Human Rights. The client has been represented in proceedings by MDAC's Legal Monitor in Russia, attorney Dmitri Bartenev.

Welcoming the judgment, MDAC's Executive Director Oliver Lewis said, "This judgment is a milestone for global human rights as 25,000 euro is the largest amount of compensation the European Court of Human Rights has ever awarded to an applicant in a disability rights case. This sum reflects the gravity of human rights violations faced by people with disabilities the world over and the seriousness with which the mainstream human rights community now views these violations. The judgment sends a clear message to governments that it will be expensive if they fail to take legislative and policy action to effectively implement international human rights law for people with disabilities."

In its judgment last week the Court reiterated that the amount of compensation for non-pecuniary damage (meaning compensation for pain and suffering) is assessed with a view to providing "reparation for the anxiety, inconvenience and uncertainty caused by the violation" and that the respondent State is under a legal obligation to "restore as far as possible the situation existing before the breach."

In awarding compensation the Court noted that the Russian judicial system had failed to remedy the past wrongs which had in fact persisted for Mr Shtukaturov over the previous four years. In doing so, the Russian system continued to infringe on some of his most fundamental rights. As the Court noted in its March 2008 judgment Mr Shtukaturov was deprived of his legal capacity to act independently in almost all areas of life. He was unlawfully detained in a psychiatric hospital for more than six months, not taking into account his subsequent periods of detention. Mr Shtukaturov's suffering was, the Court held last week, "undoubtedly aggravated by the State's failure to respect his [fair trial] rights and the authorities' interference with his right of individual petition [to the European Court of Human Rights]".

The Court's scathing comments refer to the extraordinary way in which Mr Shtukaturov's legal capacity was eventually restored in May 2009 by a St. Petersburg district court. No steps were taken by any authority following the March 2008 judgment of the European Court of Human Rights. Nor were any steps taken by any authority following the February 2009 judgment of the Russian Constitutional Court, a case concerning Mr Shtukaturov and also initiated by MDAC. In this case the constitutional court struck down as unconstitutional provisions of the Psychiatric Care Act and the Code of Civil Procedure which had been applied in his case. Despite these judgments it was an unrelated application by the State guardianship authority in light of an perceived improvement in Mr Shtukaturov's mental health condition which eventually led to the

restoration of his legal capacity. The district court's ruling did not cast doubt upon the validity of the original decision of the court, a remarkable oversight given the damning critique of the original decision both by Europe's human rights court and Russia's constitutional court. Now that he is no longer under guardianship, Mr Shtukaturov is at liberty to spend his compensation as he pleases.

In its March 2008 judgment the European Court of Human rights found Russia in violation of several provisions of the European Convention Human Rights. It said that:

- Deprivation of legal capacity constitutes a "very serious" interference of a person's private life, it is applied indefinitely, and cannot be challenged by the person under guardianship (Article 8 of the Convention)
- A mental illness cannot be the sole reason to justify stripping someone of legal capacity and Russian law is disproportionate in allowing this to happen without making provision for a tailor-made response (Article 8 of the Convention)
- The guardianship proceedings were unfair because they wholly excluded Mr Shtukaturov (Article 6 of the Convention)
- Deprivation of legal capacity is not a ground to deprive a person of their liberty (Article 5(1) of the Convention)
- Every person who is detained - including those who have been deprived of their legal capacity - should have the right to pursue independently a legal review to challenge their detention (Article 5(4) of the Convention)
- The Russian Government failed to comply with an "interim measure" of the European Court ordering it to allow Mr Shtukaturov's lawyer to have access to him (Article 34 of the Convention)

For more information on this case call Oliver Lewis, MDAC Executive Director +36 1 413 2730 or Dmitri Bartenev, attorney and MDAC Legal Monitor in Russia + 7 905 222 8915.