

Rakevich vs. Russia

A landmark case in the European Court of Human Rights has exposed the deep flaws in Russia's psychiatric system, says the head of Russia's Association of Independent Psychiatry. Worse may be to come.

Note: The following article is one in a series commissioned and published by Transitions Online (TOL) and the Mental Disability Advocacy Project (MDAP), a part of the Open Society Institute's Public Health Programs. Each article addresses the situation in an individual country or region in Central and Eastern Europe and the former Soviet Union, focusing on emerging trends in alternative services and ongoing challenges for the social inclusion of people with mental disabilities.

By Yuri Savenko

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The Russian psychiatric system came up before the European Court of Human Rights (ECHR) for the first time ever in October 2003—and was found wanting. Russia had, the court ruled, breached its own and international laws when it took 40 days to review the case of a patient who had been admitted against her will. And that was just one of many flaws listed.

The circumstances surrounding case, *Tamara Rakevich vs. Russia*, were far from sensational. Indeed, they are—and remain—very typical.

In late September 1999, Tamara Rakevich, a middle-aged woman from Yekaterinburg, was admitted against her will to a psychiatric clinic.

The paramedics who took her in had been called by a friend of hers, a Ms. M., with whom Rakevich had had a long debate about the Bible, the day before. Ms M. said Rakevich had been overly excitable and was a danger to herself and to others.

The paramedics and staff in the clinic recorded similar views when they admitted the new patient—though Rakevich claims she was not aggressive.

The panel of doctors that met within the next 48 hours declared that Rakevich's admission was justified, made a preliminary diagnosis of paranoid schizophrenia, and sent the necessary papers to court.

Under Russian law, the district court was then supposed to review Rakevich's admission within five days. But by the time the court finally convened, it was already almost 40 days since Rakevich's hospitalization. After reviewing the doctors' statements, the court ruled that her involuntary detention was legal and that her treatment should continue.

Neither Rakevich nor her attorney was given access to the conclusions of the panel of doctors.

The court had also taken into consideration testimonies from Rakevich's colleagues, some of whom said that of late she had been extremely difficult to work with and had constantly filed complaints and accusations against them.

The main witness to Rakevich's abnormal behavior—her friend M. —was not invited to testify.

The court notified neither Rakevich nor her attorney about its ruling. When she found out about the court's decision, Rakevich appealed.

Six weeks later, a regional court dismissed her appeal. It did acknowledge there was no longer any reason to keep Rakevich in hospital, but by then the decision was irrelevant: she had already been discharged from the clinic.

In 2000, Rakevich appealed to the ECHR, which took up the case.

In January 2002, Rakevich insisted on an examination by a specialist from the Russian Association of Independent Psychiatrists (AIP), which the author of this article chairs. Its specialists found no signs of psychotic disturbance, but could not express any opinion about her hospitalization because they were refused access to her medical records. When (with Rakevich's consent) the association requested access to her records, the head of the clinic, Dr. Treschilov, answered that he had "no right to send a copy" of anything from her clinical records.

Under Russian law, public organizations assisting in psychiatric cases can monitor whether human rights are being observed. Patients have a right to study their medical documents and receive copies of the medical records, and medical authorities can, with a patient's permission, pass confidential medical information to someone else.

In October 2003, the ECHR ruled that Rakevich's human rights had been abused and ordered the Russian government to pay Rakevich damages totaling 3,000 euro (over US\$3,500).

A Typical Case in Every Respect

Rakevich's case is typical. In fact, cases like hers happen every day. Cases of involuntary confinement are so typical that the professional community does not protest: there are other, grosser violations to be concerned about. Yekaterinburg is the first city where well-versed lawyers were able to not only defend the human rights of a person suffering from a psychotic condition inside Russia, but also to organize an international defense.

In 1999, when Rakevich was hospitalized, courts throughout the country (even in Moscow and Saint Petersburg) ignored the timelines set down in law. It is no coincidence that the first special report written by Russia's human-rights ombudsman, Oleg Mironov, was about how the rights of people with psychiatric conditions are denied. His report specifically stated that "patients often spent more than a month in the hospitals without a court decision."

Four years on, the situation has improved in some parts, including Moscow. But human-rights monitors who visited psychiatric hospitals in May and June 2003 found that there are still regions where courts flout the legal timelines set for cases of involuntary hospitalization—and where court hearings breach the law.

Sometimes cases are held without a prosecutor, the patient, or his legal representative being present. (This is common in regions such as Greater Moscow, Penza, Astrakhan, Perm, Karelia, Kalmykia, Buryatia, Krasnodar, Krasnoyarsk, and Khabarovsk to name just a few.)

Involuntarily detained patients are not given copies of the court's decisions on their cases; in effect, they are given no chance to appeal within the set time limits.

Also, in the overwhelming majority of regions, neither patients nor their attorneys are able to see the medical records presented in court. The same human-rights monitors found that all medical records are kept secret from patients in at least 70 percent of all Russian hospitals. The records are released only when requested by a court, a prosecutor's office, or the medical profession's associations.

Court hearings on involuntary hospitalizations usually last only minutes: the courts simply affirm the conclusions reached by psychiatrists about the need for hospitalization. Not only do judges fail to call witnesses for the patient, but they also routinely make their rulings in the absence of the patient's legal representative—and sometimes, even in the absence of the patient.

Only 1 to 2 percent of all cases are ever overturned on appeal.

The courts do not explore the details of each case of involuntary hospitalization. Instead, they base their decisions solely on the conclusions made by the panel of psychiatrists at the clinic directly involved in the case.

In practice, many judges refuse to consider all sides of a case. "We don't understand this; we'll trust the doctors," is their justification.

This is an abdication of responsibility. Under Russian law, it is for a psychiatrist to decide whether someone has a

psychotic disorder and needs treatment. But it is the prerogative of a court to then rule (within five days) on whether a person can be treated against his or her will.

The case in the ECHR highlighted the flaws in the system of involuntary hospitalization in Russian psychiatry. The Russian government's representatives therefore chose to concentrate on trying to prove that Rakevich had been severely ill when she was admitted, and posed an immediate danger to herself and to others.

They had some success—the ECHR accepted the arguments about her illness—but the court ruled that that both Russian and international law had been breached.

But the case did not just show up an abuse of rights. It also brought to light attitudes that are very characteristic of the Russian state. While admitting that the courts had been slow to hear Rakevich's case, a government representative argued that the delay did not harm her health. It would seem, then, that health is understood as something purely biological, and a patient's rights are irrelevant.

Asked to explain why Rakevich and her attorney were not given a chance to study the conclusions of the panel of psychiatrists, the government's representatives argued that the information could have aggravated her condition. And, in any case, they argued, the nature of her illness meant she could not interpret her records correctly.

As to why Rakevich's demands for Ms. M. to be invited as a witness were disregarded, a government representative said there had been no reason to call her: "M. is not a psychiatrist, and her statements would not add anything essential."

This argument ignores the requirement that involuntary hospitalization must also have a non-medical justification: someone who is ill cannot be forced into hospital simply because they are ill. He or she must be judged—by a judge—to be, for example, a danger to themselves or to others, or to have committed an offence.

A Necessary Lesson

The ECHR's decision could potentially teach Russian psychiatrists and the judicial system a valuable lesson.

Although it was the Russian court system that was found guilty in this case, the failings of the psychiatrists, too, were shown up. It was they who were *de facto* accused of illegally detaining a person for several weeks: every five days, they should have been submitting documents to the court to justify keeping Rakevich in hospital.

Moreover, the trial demonstrated that Russian laws on psychiatric care fall far short of international standards, since it does not allow patients who have been hospitalized against their will to request a judicial review themselves. A hospital can turn to a court to demand hospitalization, but patients can not appeal to be released.

The ECHR's ruling could be a lesson. So far, though, there is little sign that it is being heeded. The decision, which could be of crucial significance to Russian psychiatry, has received almost no coverage in the Russian media. Nor has it been analyzed by the psychiatric community itself. It may not be well-received: some psychiatrists already criticize the laws as being too "democratic" and limiting their ability to cure patients.

Backward-Looking Legislation

Worryingly, despite the Rakevich decision, patients and independent watchdogs may soon find their rights even more sharply restricted. Tribunals may, too, find their role limited. A bill that is due to be presented to the Duma would:

- remove the ban on testing new drugs and new medical procedures on severely sick patients;
- limit judicial involvement in cases where medical staff use force;
- remove a requirement that allows physical restraints to be used on patients only with the permission of a doctor;
- limit the rights of non-governmental organizations; and
- lower guaranteed funding for the psychiatric system.

The Russian Association of Independent Psychiatrists takes a very different position, repudiating all police methods in psychiatry. It condemns the view that underlies this bill—that, in effect, the main task of psychiatry is to protect society and the government from the mentally ill, rather than to improve the health of patients themselves.

Many in the public oppose the new bill, too, and signs of opposition were enough to postpone the first reading of the bill. Protests are unwelcome in the run-up to elections (parliamentary elections will be held this December, followed by presidential elections in March 2004). The bill will therefore go before parliament in spring 2004, after President Vladimir Putin's anticipated victory at the polls.

The AIP has presented its recommendations to politicians, and has demanded preliminary parliamentary hearings on the bill. However, there is little hope that the ECHR's decision—or even the acknowledged precedence of international law over domestic law—will make Duma deputies abandon these “police state” amendments to law on psychiatry. The current towards the opposite direction is simply too strong.

For instance, an AIP initiative that calls for the use of secondary (and independent) expert opinions has been obstructed for 14 years by the Serbsky State Center for Social and Forensic Psychiatry, an institution that, independent psychiatrists believe, is having a pernicious effect on Russian medicine.

In breach of current legislation, the Ministry of Justice has threatened to annul the AIP's registration—effectively, stopping all its activities—if it does not remove from its statutes a clause requiring independent expert opinion. The same ministry had earlier approved the AIP's statutes that included this provision.

This pressure on the AIP comes despite many examples that show clearly why it is vital to have independent expert assessments. One such example is the case of Col. Budanov, who was only recently sentenced for the murder of a Chechen girl after claiming for years, with the support of the Serbsky Institute, that he had been in the grip of psychosis at the time. In the Budanov case, it is only the AIP that has acted in a way that upholds the reputation of the psychiatric profession, a profession that is now completely under the shadow of the state.

The processes that are underway in Russia's psychiatric profession are a direct reflection of broader trends within Russia towards greater state control at the expense of civil liberties. The international community must watch and respond.

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