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

Press Release
issued by the Registrar of the Court

ECHR 280 (2015)
18.09.2015

Case concerning a disabled student's access to university buildings declared inadmissible

In its Grand Chamber decision in the case of **Gherghina v. Romania** (application no. 42219/07) the European Court of Human Rights has by a majority declared the application inadmissible. The decision is final.

The case concerned a disabled student's complaint that he was not able to continue his university studies owing to a lack of suitable facilities on the premises of the universities where he attended courses.

The Court, reiterating that those who wish to complain to the European Court against a State have to first use remedies provided for by the national legal system, found that Mr Gherghina's reasons for not pursuing certain legal remedies with regard to his complaints had not been convincing.

Notably, he could have: applied to the civil courts for an order requiring the universities concerned to install an access ramp and other facilities to accommodate his needs; brought an action in tort to make good the damage he had sustained; and/or challenged before the administrative courts the decisions to exclude him from university as he had not accumulated sufficient credits to continue with his studies. It had been up to Mr Gherghina to dispel any doubts he had had about the prospects of success of a particular remedy by applying to the domestic courts, thus creating an opportunity for the development of national case-law in the area of protection of disabled people's rights. The lack of examples in national practice of the use of, for example, a court order was hardly surprising as the trend towards increased protection of disabled persons' rights is a relatively recent branch of domestic law.

Mr Gherghina had thus failed to provide the national courts with the opportunity to prevent or put right possible Convention violations in his case through their own legal system and the Court therefore rejected his application as inadmissible for non-exhaustion of domestic remedies.

Principal facts

The applicant, Răzvan Mihai Gherghina, is a Romanian national who was born in 1982 and lives in Başcov-Valea Ursului (Romania).

In 2001, while he was enrolled as a first-year student in the marketing faculty at Constantin Brâncoveanu University in Piteşti, Mr Gherghina had an accident in which he suffered spinal injuries and became paraplegic. He initially had to use a wheelchair to move about, but his condition improved in 2007 and he became able to move on his own on flat surfaces, supporting himself on handrails or using access ramps. Having been granted permission to sit his examinations at home because the University's buildings were not accessible to people with restricted mobility, he successfully completed the first and second years of his degree course.

According to Mr Gherghina, work to make the Constantin Brâncoveanu University premises accessible to people with restricted mobility had still not been completed by March 2007, despite repeated requests made by him and his mother to the university authorities. At the end of the 2007 academic year Mr Gherghina was not given permission to sit his examinations at home. The only option offered to him was to repeat his third year on a correspondence course. Realising after a while that he was not deriving any real benefit from distance learning, he attempted to find another solution and enrolled at the law faculty of the Ecological University of Bucharest, then at the State

University of Piteşti. However, neither institution was equipped to cater for his disability and, submitting that he ended up feeling humiliated and exhausted, he eventually stopped attending classes in Bucharest in 2011 and was excluded without prior warning from the State University of Piteşti in 2012 because he had not accumulated sufficient credits to progress to the second year.

Mr Gherghina also points out that the buildings housing the courts and public authorities responsible for examining his complaints were themselves inaccessible to disabled people at the time he was attempting to obtain a higher-education degree, making it difficult for him in practice to make use of any potential legal remedies for his complaints.

According to the Government, improvements were carried out at all three universities to facilitate access for people with restricted mobility, including a panel of lecturers being set up at the State University of Piteşti to respond to Mr Gherghina's request that measures be taken to ensure better access to the premises. In addition, at Constantin Brâncoveanu University Mr Gherghina was offered solutions so that he could continue his studies after his accident such as being granted several extensions of his first year of studies and being exempted from attending compulsory lectures and seminars and allowed to sit examinations at home. They allege that Mr Gherghina was excluded from all three universities, essentially on the ground that he had failed to accumulate sufficient credits to complete the courses he had undertaken.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 20 September 2007.

Mr Gherghina complained that he had been discriminated against on the basis of his disability, alleging that it has been impossible for him to continue his university studies in or near to the town where he lives because of the lack of buildings accommodating his disability. He also alleged that, because of the lack of access to the university and other public buildings, he had been confined to his home and unable to build relationships with the outside world. He relied in particular on Article 2 of Protocol No. 1 (right to education) to the Convention, Article 2 (right to life), Article 5 (right to liberty and security) and Article 14 (prohibition of discrimination) of the Convention.

In a decision of 6 March 2012 the Court adjourned its examination of Mr Gherghina's complaint under Article 2 of Protocol No. 1, as well as his complaints under Articles 2 and 5 of the Convention, which it considered more appropriate to examine under Article 8 (right to respect for private and family life), read separately or in conjunction with Article 14 (prohibition of discrimination). The Court declared Mr Gherghina's other complaints inadmissible.

On 14 January 2014 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber.[1]

A hearing was held on the case in Strasbourg on 12 November 2014.

The following organisations were given leave (under Article 36 § 2 of the Convention) to intervene as third parties in the written procedure: the International Disability Alliance, the European Disability Forum and the Romanian Disability Council.

The decision was given by the Grand Chamber of 17, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
Josep **Casadevall** (Andorra),
Guido **Raimondi** (Italy),

[1] Under Article 30 of the European Convention on Human Rights, "Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects".

Mark **Villiger** (Liechtenstein),
Ineta **Ziemele** (Latvia),
Elisabeth **Steiner** (Austria),
Ján **Šikuta** (Slovakia),
Päivi **Hirvelä** (Finland),
Luis **López Guerra** (Spain),
Ledi **Bianku** (Albania),
Nona **Tsotsoria** (Georgia),
Kristina **Pardalos** (San Marino),
Paul **Mahoney** (the United Kingdom),
Aleš **Pejchal** (the Czech Republic),
Johannes **Silvis** (the Netherlands),
Ksenija **Turković** (Croatia),
Iulia Antoanella **Motoc** (Romania)*, Judges*,

and also Johan **Callewaert**, *Deputy Grand Chamber Registrar.*

Decision of the Court

The Court reiterated that those who wish to complain to the European Court against a State have to first use remedies provided for by the national legal system. In other words, States do not have to answer to an international body before they have had an opportunity to put matters right through their own legal system. This is called the rule of exhaustion of national remedies (under Article 35 § 1 – admissibility criteria).

It had to be determined therefore whether effective national remedies were available in theory and in practice at the relevant time in respect of the alleged violations in Mr Gherghina's case and, if so, whether he had done everything that could reasonably be expected of him to exhaust them.

However, the Court found that Mr Gherghina's reasons for not pursuing certain legal remedies had not been convincing.

First, Mr Gherghina had failed to apply to the civil courts for an order requiring the universities concerned to install an access ramp and other facilities to accommodate his needs, despite legislation having been in place since 1999 requiring public institutions to make their premises accessible to disabled people. Mr Gherghina could also have made use of the possibility under domestic law to apply for interim measures, which would have required the civil courts to examine such an application as a matter of urgency and to respond to it by means of an enforceable judgment. By way of example, in a case brought before the Galaţi County Court a woman in a comparable situation to Mr Gherghina had obtained an order in October 2013 for the association of co-owners of a block of flats where she lived to take urgent action to make the communal areas of her building accessible. The lack of such examples did not mean that the outcome of Mr Gherghina bringing such proceedings would have been uncertain; it was hardly surprising that a court order – which was not a new or special remedy – had not been used very often in this area as this is a relatively recent branch of domestic law that has emerged alongside the trend towards increased protection of the rights of disabled people. Indeed, the Court found that, if Mr Gherghina had had any doubts about the possibility of obtaining a court order, it had been up to him to dispel those doubts by applying to the domestic courts.

Similarly, Mr Gherghina could have created an opportunity for the development of national case-law if he had brought an action in tort to obtain an order for the universities concerned to make good the damage he had sustained. The Court reiterated that mere doubts as to the prospects of success of a particular remedy which is not obviously futile was not a valid reason for failing to make use of that remedy.

Lastly, Mr Gherghina could have brought administrative proceedings to challenge the decisions to exclude him from university. If he had argued that the reasons for his exclusion – namely, the shortfall of credits for him to continue his studies – had largely been due to the fact that the universities concerned had not provided him with access to their buildings and services, he could have had the decisions to exclude him set aside and been reinstated to the university. He could even perhaps have been awarded credit for what he had studied in previous years.

Nor did the Court consider that there were any other special circumstances to exempt Mr Gherghina from the requirement to exhaust national remedies. Even though the buildings housing the domestic courts to which Mr Gherghina could have made his complaints were themselves not equipped to accommodate disabled people, there had been nothing to prevent him from applying to the courts in writing or through a representative. This is precisely what he had done on other occasions following his accident when challenging a decision not to prosecute a person he had accused of fraud and when claiming damages from an insurance company. As concerned Mr Gherghina's submission that it was unreasonable to expect individuals to engage in proceedings against public service providers involved in completing work to ensure accessibility to public buildings, the Court once again reiterated that national authorities were best placed to decide on matters of economic and social policy entailing public expenditure.

The Court therefore found that Mr Gherghina had not provided the national courts with the opportunity to prevent or put right Convention violations through their own legal system and rejected his application as inadmissible for non-exhaustion of domestic remedies.

The decision is available in English and French.

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