



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

FOURTH SECTION

CASE OF SOLCAN v. ROMANIA

(Application no. 32074/14)

JUDGMENT

STRASBOURG

8 October 2019

FINAL

08/01/2020

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

In the case of Solcan v. Romania,

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

Jon Fridrik Kjølbro, *President*,

Faris Vehabović,

Iulia Antoanella Motoc,

Stéphanie Mourou-Vikström,

Georges Ravarani,

Jolien Schukking,

Péter Paczolay, *judges*,

and Andrea Tamietti, *Deputy Section Registrar*,

Having deliberated in private on 10 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 32074/14) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Ms Luminița Zamfira Solcan (“the applicant”), on 17 April 2014.

2. The applicant was represented by Ms A. Diaconescu, a lawyer practising in Iași. The Romanian Government (“the Government”) were represented by their Agent, most recently Mr. V. Mocanu, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, a breach of Article 8 of the Convention as a result of the failure of the authorities to allow her to attend her mother’s funeral during her involuntary hospitalisation in an inpatient psychiatric facility.

4. On 1 September 2015 notice of the complaint under Article 8 of the Convention was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1969 and is currently in a psychiatric facility in Pădureni-Grajduri.

6. In 2005 she committed a murder in France. On 12 November 2007 the Mâcon County Court discontinued the criminal investigation against her on the grounds that she had committed the offence in a state of diminished responsibility. The medical experts diagnosed her as suffering from

paranoid schizophrenia and concluded that her acts had been the result of paranoid delusions. Endorsing the experts' findings that she posed a danger to the public on account of her mental health, the court ordered her placement in a psychiatric facility in France for an indefinite period of time.

7. In 2011 the applicant lodged a request to be transferred to a similar psychiatric facility in Romania in order to be closer to her mother, who lived in Iași.

8. By a decision of 30 March 2012 the Bucharest Court of Appeal authorised her transfer to a psychiatric facility in Pădureni-Grajduri, a village located about twenty kilometres from Iași. At the time of the latest information available to the Court (9 November 2016), she was still detained there.

9. On 11 April 2013 the applicant's mother died. On 12 April 2013 the applicant lodged a request with the Iași District Court for leave to attend her funeral.

10. On 23 May 2013 the court examined her request and refused to grant her leave. It pointed out that under Article 39 of the Mental Health Act (see paragraph 14 below) the restriction of liberty of mentally ill persons was justified for the protection of their health or safety or for the protection of others, and that under Article 49 of the same Act the facility was chosen so as to allow the mentally ill patient to be as close to home as possible. When applying the above provisions to the applicant's situation, the court held as follows:

"Bearing in mind these legal provisions, the court considers that the safety of others prevails, the patient Solcan Luminița having been diagnosed with a mental illness which could potentially present a danger to the lives of others and their feelings of peace and confidence; for this reason, the request made by the patient shall be dismissed ..."

11. The applicant lodged an appeal on points of law against that decision. She claimed that the provisions of Law no. 275/2006 on the execution of sentences, which authorised the temporary interruption of a custodial sentence for family reasons, should also apply to her detention in a psychiatric facility. The prosecutor's office argued that a measure of detention in a medical facility could not be assimilated to a custodial sentence and accordingly there was no legal basis for the interruption of the applicant's involuntary hospitalisation in a psychiatric facility.

12. By a final decision of 22 October 2013 the Iași County Court dismissed the applicant's appeal. It held that under Article 114 of the Criminal Code read in conjunction with Article 434 of the Code of Criminal Procedure her detention in a psychiatric facility could be either discontinued or replaced by an obligation to undergo outpatient mental health treatment after an assessment by medical experts. It concluded that the applicant's request to interrupt her detention in a psychiatric facility had no basis in law and that no analogy could be drawn between her situation and the situation

of a prison detainee. Accordingly, the provisions of Law no. 275/2006 authorising the temporary interruption of detention on family grounds were not applicable to her situation. Moreover, the court noted that in any event the applicant's request was no longer valid as her mother's funeral had already taken place.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. The relevant provisions of the Criminal Code and the Code of Criminal Procedure, as in force at the relevant time, are set out in *Filip v. Romania* (no. 41124/02, §§ 30-31, 14 December 2006).

14. Psychiatric detention is governed by the provisions of the Mental Health Act (Law no. 487 of 11 July 2002 on mental health and the protection of people with mental disorders) published in Official Gazette no. 589 of 8 August 2002. It was amended by Law no. 600/2004 and subsequently by Law no. 129/2012.

The Mental Health Act does not contain any provisions expressly authorising a judge to interrupt or suspend the involuntary hospitalisation of a mentally ill person.

15. The Government attached to their observations three decisions made by the Buzau District Court (on 30 January 2014, 6 February and 27 March 2015 respectively) by which the applicants, who had all been admitted to a psychiatric facility for inpatient treatment, were allowed to attend the funerals of their family members. In all three case files there was medical evidence proving that they were able to attend. After assessing the particular circumstances of each applicant, the court granted them leave to attend their parents' funerals. Their requests were examined by the court without undue delay so that they could attend. In one of the three cases the request was allowed on the condition that the applicant would be accompanied by medical staff and under police escort.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

16. The applicant complained that the refusal to allow her to attend her mother's funeral had violated Article 8 of the Convention. The relevant parts of this provision read as follows:

“1. Everyone has the right to respect for his ... private and family life...

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

17. The Court notes that the application 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' submissions

(a) The applicant

18. The applicant submitted that the relevant domestic legislation did not contain any provisions authorising a judge to interrupt or suspend the involuntary hospitalisation of a mentally ill person. However, she pointed out that in the three cases relied on by the Government (see paragraph 15 above), the Buzău District Court had allowed the applicants' requests for permission to attend their parents' funerals without providing any legal basis for the decisions.

19. In all three cases the domestic courts had examined the requests for leave in due time, while in her case the decisions had been made after her mother's funeral. The request she had lodged on 12 April 2013 had not been examined until 25 May 2013 (see paragraphs 9 and 10 above).

(b) The Government

20. The Government submitted that the purpose of admitting a mentally ill person to an inpatient mental health facility was to protect the public from danger and prevent him or her committing criminal offences. Moreover, as this type of measure played a preventive role, the State had a wide margin of appreciation.

21. They also contended that since 2006 the Code of Criminal Procedure had provided for an automatic (*ex officio*) judicial review of involuntary hospitalisation at regular intervals. The courts could also decide to replace it with an alternative measure. Decisions were made after hearing the mentally ill person and on the basis of medical evidence. The courts could either discontinue or replace the measure but not interrupt it because as long as the measure was maintained it meant that the mentally ill person posed a danger to him or herself or others.

22. The Government maintained that Romanian law did not allow for the interruption of such a measure. Drawing an analogy between the applicant's situation and the provisions concerning the interruption of custodial sentences was not possible. Accordingly, neither the provisions of the Code of Criminal Procedure nor Law no. 254/2013 on the execution of sentences (which replaced Law no. 275/2006) were applicable. Lastly, referring to the

domestic decisions attached to their observations (see paragraph 15 above), they pointed out that although the possibility for mentally ill patients to attend their parents' funeral was not provided for by domestic law, such requests were nevertheless accepted by the domestic courts.

2. The Court's assessment

23. The Court reiterates that any interference with an individual's right to respect for his private and family life will constitute a breach of Article 8, unless it was "in accordance with the law", pursued a legitimate aim or aims under paragraph 2, and was "necessary in a democratic society" in the sense that it was proportionate to the aims sought to be achieved (see, for instance and among other authorities, *Elsholz v. Germany* [GC], no. 25735/94, § 45, ECHR 2000-VIII).

(a) Whether there has been interference

24. The Government did not express their position on whether there had been "an interference by a public authority" within the meaning of Article 8 § 2 of the Convention with the applicant's right to respect for her family life as guaranteed by Article 8 § 1. The Court has already found that refusing a detainee leave to attend a relative's funeral constitutes an interference with the right to respect for family life (see *Płoski v. Poland*, no. 26761/95, § 32, 12 November 2002; see also, *mutatis mutandis*, *Schemkamper v. France*, no. 75833/01, § 31, 18 October 2005). Although the applicant is detained in a psychiatric facility and not a prison as in the cited case-law, the Court, notwithstanding the differences between prisoners and psychiatric patients, sees no reason to depart from its previous findings in the present case. Accordingly, the refusal to grant the applicant leave to attend her mother's funeral interfered with her rights under Article 8 of the Convention.

(b) Whether the interference was justified

(i) Lawfulness of the interference

25. The Court notes that in the present case the domestic court of last resort dismissed the applicant's request for leave on the grounds that there were no legal provisions allowing for the interruption of her detention in a psychiatric facility. It considered that an analogy could not be drawn between her situation and Law no. 275/2006 on the execution of sentences (see paragraph 12 above). Moreover, the Court notes that Romanian law does not contain any provisions on this particular issue.

26. Despite citing examples of domestic decisions whereby mentally ill persons were allowed by the courts to attend their parents' funerals (see paragraph 15 above), the Government affirmed that no such right existed in domestic law. However, it is to be noted that while no right existed, it was

not expressly denied by law either. The domestic decisions indicated by the Government might suggest that there was a practice in Romania recognising the existence of such a right and setting the conditions for granting leave to mentally ill persons to attend the funerals of their close family members. At this point, the Court does not have the means to assess whether this practice is sufficiently clear to constitute “law” within the meaning of Article 8 of the Convention (see, *mutatis mutandis*, *Feldman v. Ukraine* (no. 2), no. 42921/09, § 23, 12 January 2012).

27. Be that as it may, the Court considers that even assuming that the interference was lawful, it was not “necessary in a democratic society”, for the reasons detailed below (see paragraphs 29-36 below).

(ii) Whether the interference pursued a legitimate aim

28. The Court is satisfied that the interference took place in the interests of “public safety” and “for the prevention of disorder or crime”.

(iii) Whether the interference was necessary in a democratic society

29. According to the Court’s case-law, Article 8 of the Convention does not guarantee a detained person an unconditional right to leave to attend a relative’s funeral. At the same time the Court emphasises that even if a detainee by the very nature of his situation must be subjected to various limitations of his rights and freedoms, every such limitation must be nevertheless justifiable as necessary in a democratic society (see *Lind v. Russia*, no. 25664/05, § 94, 6 December 2007). The State can refuse an individual the right to attend his or her parents’ funerals only if there are compelling reasons and if no alternative solution can be found (see *Płoski*, cited above, § 37). In addition, the Court reiterates that perpetrators of criminal acts who suffer from mental disorders and are placed in psychiatric facilities are in a fundamentally different situation than other detainees, in terms of nature and purpose of their detention (see, *mutatis mutandis*, *Ilmseher v. Germany* [GC], nos. 10211/12 and 27505/14, §§ 219-27, 4 December 2018). Consequently, the Court accepts that there are different risks to be assessed by the authorities when the request for temporary release is made by a detainee from a psychiatric facility.

30. The Court observes that the applicant was involuntarily admitted to a psychiatric facility because she had committed a violent crime in 2005 (see paragraph 6 above). Seven years later, in 2013, the domestic courts dismissed her request to attend her mother’s funeral without any apparent assessment of her condition at that time. In particular, when considering the request on its merits, the first-instance court referred only to her initial diagnosis and in general to the danger she might pose to the public because of her illness. There is no evidence that the applicant’s situation was

assessed either by medical experts or by the court itself in relation to the request to attend the funeral.

31. Furthermore, in the final decision of 22 October 2013, the applicant was eventually denied the right to attend her mother's funeral on the sole grounds that the domestic law did not provide for such a possibility (see paragraph 12 above). Her individual situation was not assessed at all by the Iași County Court.

32. It is to be noted that, although unable to refer to any legal basis for their decisions, when allowing similar requests, the domestic courts based their findings on medical evidence assessing the claimants' situation (see paragraph 15 above). It is however unclear whether an obligation to request a medical assessment lies with the claimants and if so, to whom and at what point such a request should be made. Under these circumstances, the applicant cannot be blamed for the absence of any medical evidence attached to her request for leave.

33. Taking into account the seriousness of what was at stake in this case, namely refusing an individual the right to attend her mother's funeral, even if the applicant could be seen as posing a threat to public safety at the relevant time, the domestic courts should have explored alternative ways of ensuring her attendance at the funeral and only dismissed her request for leave if none could be found. The Court observes, for instance, that one patient in a similar situation was able to have escorted leave (see paragraph 15 *in fine* above). In the applicant's case the domestic courts did not even consider that as an option.

34. In the Court's opinion the unconditional denial by the domestic courts of compassionate leave or another solution to enable the applicant to attend her mother's funeral is not compatible with the State's duty to assess each individual request on its merits and demonstrate that the restriction on the individual's right to attend a relative's funeral was "necessary in a democratic society" (see, *mutatis mutandis*, *Feldman*, cited above, § 35).

35. Lastly, the Court notes that the State authorities did not handle the applicant's request for leave diligently and speedily; her request was examined by the first-instance court a month and a half after her mother's funeral had taken place (see paragraph 10 above), thus depriving a possible decision to grant leave of any useful effect.

36. In the light of the above, the Court finds that there has been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage. She submitted that the inability to attend her mother’s funeral had caused her lasting suffering.

39. The Government submitted that the applicant’s claim was excessive and asked the Court to rule that the finding of a violation constituted in itself sufficient just satisfaction.

40. In the circumstances of this particular case and deciding on an equitable basis, the Court awards the applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

41. The applicant did not claim any costs and expenses. The Court is therefore not called upon to make any award under this head.

C. Default interest

42. 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, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds*
 - (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, EUR 6,000 (six thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of non-pecuniary damage;

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

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Deputy Registrar

Jon Fridrik Kjølbro
President