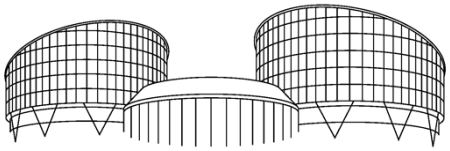

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF MARTINEZ FERNANDEZ v. HUNGARY

(Application no. 30814/22)

JUDGMENT

Art 5 § 1 • Persons of unsound mind • Involuntary detention and treatment of an elderly woman with dementia for six days in a psychiatric hospital • Failure of guardian *ad litem* to effectively represent the applicant and protect her rights • Underperformance of guardians *ad litem* following highly formalistic procedures not in line with their statutory purpose and constituting a systemic domestic problem • No appearance of careful consideration, at any stage of the court hearing, of the possible effect of the medication given to the applicant on her ability to meaningfully participate in the court proceedings • Domestic authorities' failure to comply with the procedural requirements required for involuntary hospitalisation by ensuring proceedings lawful and devoid of arbitrariness

Prepared by the Registry. Does not bind the Court.

STRASBOURG

27 May 2025

FINAL

27/08/2025

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

In the case of Martinez Fernandez v. Hungary,

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

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Jovan Ilievski,
Péter Paczolay,
Gediminas Sagatys,
Stéphane Pisani,
Juha Lavapuro*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 30814/22) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Ms Benitóné Martinez Fernandez ("the applicant"), on 13 June 2022;

the decision to give notice to the Hungarian Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 6 May 2025,

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

INTRODUCTION

1. The application concerns the involuntary detention and treatment of an 83-year-old woman with dementia for six days in a psychiatric hospital. It raises an issue under Article 5 of the Convention.

THE FACTS

2. The applicant was born in 1937 and lives in Budapest. She was represented by Mr J. Fiala-Butora, a lawyer practising in Budapest.

3. The Government were represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

5. The applicant has been living with dementia for several years. At the time of the events complained about she was living in her own home, with twenty-four-hour supervision provided to her by a paid caregiver and her family.

6. On 1 September 2020 the applicant had been feeling unwell and the social caregiver (*szociális gondozó)* contacted the emergency medical services. The applicant was taken to the toxicology unit of a general hospital on suspicion of having accidentally taken an overdose of prescribed medication. Even though it was eventually confirmed that she had not taken

an overdose, she was transferred to a psychiatric hospital because she seemed to be restless and disoriented.

7. At the hospital the applicant was first examined at the psychiatric emergency outpatient department. During the examination she was uncooperative, singing and shouting and demanding to be released. She allegedly punched the paramedic in the arm and spoke to the doctor in too friendly a manner. She was given antipsychotic and sedative injections. Because of her behavioural disturbances, she was admitted to the psychiatric ward of the hospital as an involuntary patient. According to the admission report, there were no signs of "suicidal thoughts, impulses or intentions". She was diagnosed with dementia and organic mood disorder.

8. The applicant submitted that her son had not been informed that she had been transferred to a psychiatric hospital. Because her telephone had been taken away from her in the psychiatric hospital, she had been unable to contact him. When her son eventually found her, he explained to the treating doctor that his mother's disorientation, agitated state and uncooperative behaviour towards strangers stemmed from her dementia, but the hospital refused to release her and informed him that they had applied for judicial approval of her hospitalisation. The applicant had given her son a power of attorney to represent her during the court review of her hospitalisation. The applicant's son asked the hospital to notify the court of the arrangement for him to represent her.

9. A representative of the hospital telephoned the applicant's son at 10 a.m. the next morning and informed him that the court hearing would take place in an hour at the hospital.

10. The hearing lasted for 17 minutes, from 11.03 a.m. to 11.20 a.m. on 3 September 2020.

11. The judge was informed of the power of attorney at the beginning of the hearing. The judge had already appointed a guardian *ad litem* by that time. Since the applicant's son did not have legal qualifications, the judge continued the appointment of the guardian *ad litem* to protect the applicant's legitimate interests. According to the hearing records, the judge ordered the guardian to give the applicant and her son information about the proceedings and her rights. The applicant had no questions or comments in that regard.

12. The representative of the hospital explained the reasons for and circumstances of the applicant's admission, her current mental health status and the treatment provided.

13. The applicant was then heard briefly. She gave inadequate and confused answers when asked about her name, date and current situation. While the applicant was giving evidence, her son intervened and asked for it to be recorded that his mother was in a much worse state than the day before when he had last seen her in the hospital.

14. Based on her own observations and the applicant's medical documentation, the psychiatric expert reported that the applicant had suffered

from "confusion connected to mental deterioration" (*szellemi leépüléshez társuló zavartság*). She considered the applicant's involuntary admission justified because her behaviour at the time, manifested in "confusion, disorientation, lack of critical thinking, impaired impulse control, emotional and mood instability, restlessness, incoherent speech and thinking", suggested an imminent danger. Given that the symptoms of the applicant's mental condition remained unchanged, she also found it appropriate for the applicant's detention in hospital to continue as well.

15. The applicant's son repeatedly emphasised that his mother's mental state had deteriorated compared to the previous day and stated that if the expert had assessed the need for future hospitalisation based on his mother's current condition, he had reservations about that.

16. The guardian *ad litem* noted that the procedure had taken place in accordance with the law and agreed that the applicant should undergo involuntary treatment.

17. The court found the applicant's emergency hospitalisation justified on the grounds that she demonstrated an imminently dangerous behaviour as reported by the medical expert. It also ordered her to be treated compulsorily, again relying on the expert's report that the mental state underlying the applicant's imminently dangerous behaviour remained unchanged at the time of the hearing.

18. On 7 September 2020 the applicant was released from hospital because the doctor in charge had found that her mental health and behaviour had stabilised and she could no longer benefit from inpatient hospital treatment.

19. On 18 September 2020 the applicant filed an appeal against the court decision on her involuntary admission and treatment. She argued that her behaviour had been a consequence of the long-standing deterioration of her mental health condition because of her dementia, which was not an emergency situation requiring urgent care. That chronic condition would have been better managed with twenty-four-hour care in her own home rather than in the unfamiliar environment of a psychiatric hospital. She also complained that she had not been able to exercise her procedural rights during the court hearing. Firstly, she had been heavily sedated at the time of the hearing, in breach of section 199 (4) of Act no. CLIV of 1997 on Healthcare. Her sedated state had prevented a meaningful assessment of her condition by the expert and the court. Secondly, she had not been properly represented in the proceedings, as her representative had not been notified sufficiently before the hearing to prepare for it, and her guardian *ad litem* had made no statement on her behalf other than to support her involuntary treatment.

20. The Budapest High Court dismissed the applicant's appeal. The appeal court held that the first-instance court, being unaware that the applicant's son had power of attorney, could not be held responsible for the late notification of the applicant's representative. The first-instance court had

been right to appoint a guardian *ad litem* to defend the applicant's interests because her representative lacked legal expertise. The record of the hearing showed that the guardian had informed the applicant's son about the proceedings. In any case, as the applicant's primary representative had been her son, the alleged passivity of the guardian *ad litem* was irrelevant. The court also held that the first-instance court had reached the well-founded conclusion that, at the time of her admission, the applicant's conduct – such as her suspected overdose, confusion and emotional instability – constituted an imminent and serious threat to her health and safety, and that that conclusion was supported by a duly reasoned expert opinion. The court also upheld the decision that the applicant should be treated compulsorily.

21. The applicant sought review in the *Kúria,* repeating the arguments she had made in her appeal. She argued that she had not shown any imminently dangerous behaviour necessitating involuntary hospitalisation or treatment. She also complained that the appeal court, instead of finding that holding the court hearing when she was in a sedated state was in breach of domestic law, had attributed her demeanour to the severity of her condition. The applicant further argued that the legal question was not whether the first-instance court had been responsible for the late summoning of her representative but whether it had ensured overall that she could effectively exercise her procedural rights. In her view, it should have taken a break, adjourned the hearing, or warned the guardian *ad litem* to be more proactive.

22. The *Kúria* upheld the decision of the High Court. It emphasised the limits of its review, observing that the applicant had not complained about a violation of Article 279 (1) of the Code of Civil Procedure, which sets out the rules governing the assessment of evidence by courts. It observed that in the applicant's case the lower courts had reached the same legal conclusion that her conduct had met the criteria for imminently dangerous behaviour. However, as the applicant had not referred to a breach of Article 279 (1) of the Code of Civil Procedure and therefore had not complied with Article 413 (1) b) of the Code of Civil Procedure in that regard, the *Kúria* had not been in a position to examine whether the assessment of the evidence by the appeal court had been correct or whether the court had reached its decision unlawfully. The *Kúria* had considered the allegations of breaches of sections 199 (1), (4) and (5) and section 201 (4) of the Healthcare Act and had found them to be unfounded.

23. The *Kúria* found that the applicant had failed to prove that her behaviour had not presented an imminent danger to others or to her own life or health. In its view, at the time of the applicant's hospitalisation, her behaviour had suggested an immediate risk, given her suspected suicide attempt by overdose, her aggressive behaviour towards the medical staff and her confused and disoriented state. As to whether her detention needed to be continued, the court observed that as the applicant's condition had not changed since her admission her continued detention was justified. The *Kúria*

noted that the expert had considered that the applicant was able to be examined and that her medical record had not indicated any treatment that would have prevented her from being interviewed. The fact that her answers had been inadequate did not prove that she had been sedated. The *Kúria* also emphasised that the guardian *ad litem* had informed the applicant and her representative about the proceedings and that the applicant's son had not pleaded lack of preparation or asked for the hearing to be postponed.

24. In her constitutional complaint the applicant disagreed with the conclusions of the *Kúria.* Regarding the shortcomings of her representation, she pointed out that despite the fact that the court had instructed the guardian *ad litem* to properly inform her representative about the procedure and her rights, this had not been done either during the hearing (as there had been no break) or afterwards.

25. On 3 May 2022 the Constitutional Court examined the applicant's constitutional complaint on the merits but dismissed it as unfounded. The Constitutional Court considered the specifications for emergency treatment under section 199 of the Healthcare Act and for a judicial review of such a decision to detain and treat someone involuntarily, emphasising the following:

> "... in the case of emergency treatment, the court must also decide whether further compulsory treatment in hospital of the patient is justified. By the time the court reaches its decision, the patient's behaviour will therefore normally no longer present an imminent danger, precisely because emergency treatment has already begun, its primary purpose being to eliminate that imminently dangerous behaviour. In order to make a prudent decision, it is therefore essential (because of the patient's ongoing medical treatment) that the court should always base its decision on the opinion of an independent medical expert and, if possible (where the patient's condition allows), it should take its decision after hearing the patient. The medical expert's examination must take into account, in addition to the patient's current condition, the fact that the patient was previously given medical treatment and must also assess the impact of that treatment on the patient's current condition, and the expert's opinion must state in sufficient detail, referring specifically to the patient's condition, and in a manner that leaves no doubt and is capable of being reviewed, the reasons for and the extent to which further compulsory treatment is justified."

26. The Constitutional Court accepted the expert's view that the applicant had manifested symptoms – impulse control disorder – which met the requirements of imminently dangerous behaviour within the meaning of section 188 (c) of the Healthcare Act. In relation to the alleged overmedication, the Constitutional Court observed that the forensic psychiatrist must have known what medication the applicant had been prescribed when she had written her report, given that at the beginning of the hearing the hospital had reported on the applicant's treatment (see paragraph 12 above).

27. Concerning the issue of representation during court proceedings, the Constitutional Court emphasised that the role of the guardian *ad litem* was not a formal one:

"... the task of the guardian *ad litem* is not simply to certify the formal legality of the actions of the medical expert, the hospital and the court (acting in a kind of 'official witness' role) but also to represent the interests of the patient in substantive terms and to make all the statements ... [and requests] necessary to reach an informed decision on the question of the patient's emergency treatment which are in the best interests of the patient. This is also why section 201 (5) of the Healthcare Act specifically states that the patient's representative or the guardian *ad litem* representing the patient must visit the patient before the court hearing, inform him or her of the circumstances of the admission and inform him or her of his or her procedural rights. Compliance with these legal requirements (as with other provisions of the Healthcare Act) may also be subject to judicial review."

28. In relation to the role of authorised representative, the Constitutional Court pointed out that the Healthcare Act did not clarify whose duty it was to notify the patient's representative. Regardless of that, if the hospital is aware of the identity of the patient's representative, it is required under the Fundamental Law to give the court the representative's contact details. If the applicant's representative has not been notified of the proceedings, the court has a duty to ensure that the applicant is adequately represented and the mere appointment of a guardian *ad litem* is not sufficient. However, in the present case the Constitutional Court found that (i) the applicant's representative was ultimately present during the proceedings; (ii) given the representative's lack of legal expertise, the guardian *ad litem* was not released from his or her duty; and (iii) the guardian *ad litem* informed the representative of the proceedings, and that therefore the alleged deficiencies in the applicant's representation did not amount to a violation of the Fundamental Law.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW AND PRACTICE

29. The relevant provisions of Act no. CLIV of 1997 on Healthcare (hereinafter the "Healthcare Act"), as in force at the relevant time, read as follows:

Section 188

"For the purposes of this Chapter:

...

b) 'dangerous conduct' shall mean where the patient may represent a threat to his or her own or another person's life, physical integrity or health because of any mental disorder he or she may have, and a lack of treatment is likely to result in further deterioration of his or her condition, which can be prevented by treatment as specified in section 196 c), but no emergency treatment in hospital is justified by the nature of the illness;

c) 'imminently dangerous conduct' shall mean where the patient may represent an imminent and serious threat to his or her own or another person's life, physical integrity or health because of any acute mental disorder he or she may have, and a lack of prompt

treatment is likely to result in further deterioration of his or her condition, which can be prevented by urgent treatment as specified in section 196 b);

...”

Section 196

“Psychiatric patients can be admitted to a hospital

(a) with the patient’s consent or at the request of a person within the meaning of Article 16 (1) to (2) (hereinafter referred to as ‘voluntary treatment’),

(b) in the case of imminently dangerous behaviour requiring immediate treatment in hospital on the recommendation of a doctor who has observed the patient’s behaviour (hereinafter referred to as ‘emergency treatment’),

(c) on the basis of a court decision ordering compulsory treatment in hospital (hereinafter referred to as ‘compulsory treatment’).

...”

Section 199

“(1) The doctor in charge shall immediately make arrangements to commit a patient to an appropriate psychiatric hospital if the patient’s conduct presents an imminent danger which can only be prevented by urgent treatment in a psychiatric hospital. (...)

(2) The head of the psychiatric hospital shall, within 24 hours of the patient’s admission, notify the court of the admission and initiate proceedings to establish the necessity of the patient’s admission and for a court order for compulsory psychiatric treatment.

(3) The court must make a decision within 72 hours of receiving the notification. Until the court’s decision is made, the patient can be temporarily detained in the hospital. (...)

(4) Until a court decision is taken, efforts should primarily be focused on eliminating dangerous or imminently dangerous behaviour. Interventions making it impossible for the court to assess the patient’s current mental state during the hearing should be avoided to the extent ... that [*lege artis medicinae*] it is appropriate and possible. Where such an intervention is nevertheless made, it should be fully documented and reasons should be given.

(5) The court shall order the compulsory treatment of a patient who has been admitted to the hospital as a matter of emergency hospitalisation if the patient exhibits dangerous conduct and his or her treatment in a hospital is necessary.

(6) The court must hear the patient and the head of the hospital or the doctor appointed by him or her before taking a decision.

(6a) The court shall, immediately upon receipt of a notification from the head of the psychiatric hospital, appoint an independent forensic psychiatrist who is not involved in the patient’s treatment and who shall present his or her opinion, in writing or orally, at the latest at the hearing referred to in paragraph (6).

...

(9) The patient must be discharged from the psychiatric hospital if his or her treatment in a hospital is no longer necessary.

...”

Common procedural rules
Section 201

"...

(4) Adequate representation of the patient shall be ensured in the court proceedings. The Patients' Representative shall also be entitled to represent the patient on the basis of the patient's or his or her legal representative's authorisation. If the patient has no legal or authorised representative during the proceedings, the court shall appoint a guardian *ad litem.*

(5) The Patients' Representative or guardian *ad litem* representing the patient must visit the patient before the court hearing and inform him or her of the circumstances of the admission to hospital and his or her rights in the proceedings."

30. The relevant provisions of Act no. CXXX of 2016 on the Code of Civil Procedure, as in force at the relevant time, read as follows:

Section 279

[Weighing the results of the taking of evidence]

"(1) The court shall establish the relevant facts of the case according to its [intime] conviction, by comparing and evaluating – individually and jointly – the parties' factual statements and conduct during the proceedings, as well as the evidence obtained during the hearing and other information available in the case file."

Section 413

[Content of an application for review]

"(1) In addition to the general rules on submissions, an application for review shall specify:

...

b) the procedural or substantive breach of law affecting the decision on the merits of the case, specifying the violation of law and the violated provision, and the grounds on which the party seeks the adoption of a new decision or the setting aside of the decision;"

31. In April 2017, a round table discussion took place in the Office of the Commissioner for Fundamental Rights of Hungary ("the Commissioner") about the procedure for emergency treatment. Representatives of the judicial and professional bodies concerned took part: the *Kúria,* the Budapest High Court, the Ministries responsible for justice and for health, the Patients' Representative, the Hungarian National Authority for Data Protection and Freedom of Information, the Psychiatry Department of the College of Health Professionals, the Hungarian Chamber of Forensic Experts, the Hungarian Bar Association and various human rights experts. The findings of the discussion were used in a comprehensive investigation of emergency treatment carried out by the Commissioner on his own initiative. A report presenting the results of the investigation was published on 9 February 2018.

32. In his report, the Commissioner emphasised the important role of the guardian *ad litem* in protecting the patient's rights throughout the process of

emergency treatment. In the Commissioner's view, the guardian's obligations under the Healthcare Act were to visit the patient in the hospital before the hearing and ideally to take the opportunity to obtain information about the patient's care from the hospital. A lawyer experienced in communicating with people with psychosocial disabilities should act as guardian *ad litem*. Furthermore, hospital staff should ensure that when the guardian and the patient meet, any medication the patient may be taking does not prevent the guardian from having a proper discussion with the patient. The Commissioner's investigation highlighted that unfortunately this tends not to happen in practice. Guardians typically arrive at the hearing with the judge and the expert. They have not met the patient beforehand and their interactions with patients take place in front of all the participants at the hearing. This results in an extremely formal procedure that does not fulfil the purpose and role the law expects a guardian to play.

33. The Commissioner considered it essential that the psychiatric expert should examine the patient and read the medical documentation before the hearing. The documentation must include information about any medication given to the patient and the reason for its prescription. Medication affects the ability of the participants in a hearing to realistically assess the patient's condition, yet judges and lawyers often encounter patients under the influence of strong sedatives.

34. As regards the practice of the domestic courts, on 18 November 2020 the Civil College of the *Kúria* approved the summary opinion of its Working Group analysing the practice of Hungarian courts in ordering emergency treatment (*a sürgősségi pszichiátriai intézeti gyógykezelés elrendelésével kapcsolatos bírósági gyakorlat vizsgálatára létrehozott joggyakorlat-elemző csoport*). The judges discussed their experiences and reviewed the files of 190 cases.

35. The Working Group found no indication in the case files that the guardians *ad litem* had contacted the patients before the hearing. It concluded that the information provided by the guardians had not generally contained any substantive information. In all the cases reviewed by the working group, the guardian had attended the hearing, but his or her activity on behalf of the person had been limited to lodging an appeal against the court decision. In several cases, the guardian had consented to the person's treatment and had agreed with the expert's opinion.

II. RELEVANT INTERNATIONAL MATERIALS

A. United Nations

1. Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care

36. The relevant parts of the United Nations Principles for the protection of Persons with Mental Illness and for the Improvement of Mental Health Care (17 December 1991, A/RES/46/119) read:

Principle 16
Involuntary admission

"1. A person may be admitted involuntarily to a mental health facility as a patient; or having already been admitted voluntarily as a patient, be retained as an involuntary patient in the mental health facility if, and only if, a qualified mental health practitioner authorized by law for that purpose determines, in accordance with Principle 4, that that person has a mental illness and considers:

(a) That, because of that mental illness, there is a serious likelihood of immediate or imminent harm to that person or to other persons; or

(b) That, in the case of a person whose mental illness is severe and whose judgement is impaired, failure to admit or retain that person is likely to lead to a serious deterioration in his or her condition or will prevent the giving of appropriate treatment that can only be given by admission to a mental health facility in accordance with the principle of the least restrictive alternative.

..."

Principle 18
Procedural safeguards

"1. The patient shall be entitled to choose and appoint a counsel to represent the patient as such, including representation in any complaint procedure or appeal. If the patient does not secure such services, a counsel shall be made available without payment by the patient to the extent that the patient lacks sufficient means to pay.

..."

2. Convention on the Rights of Persons with Disabilities

37. The relevant part of the United Nations Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006 and opened for signature on 30 March 2007 (2515 UNTS 3, "the CRPD"), ratified by Hungary on 20 July 2007, provides:

Article 13
Access to justice

"1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and

indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff."

Article 14
Liberty and security of person

"1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(a) Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation."

3. Practice of the United Nations Human Rights Committee

38. On 16 December 2014 the Human Rights Committee issued General Comment No. 35 on Article 9 (Liberty and security of person) of the International Covenant on Civil and Political Rights (UN Doc. CCPR/C/GC/35). In Section II of the General Comment the Human Rights Committee gave its views on involuntary detention on mental health grounds:

II. Arbitrary detention and unlawful detention

"19. [Deprivation of liberty] must be applied only as a measure of last resort and for the shortest appropriate period of time, and must be accompanied by adequate procedural and substantive safeguards established by law. The procedures should ensure respect for the views of the individual and ensure that any representative genuinely represents and defends the wishes and interests of the individual."

B. Council of Europe

39. The relevant part of the 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, adopted on 22 September 2004, reads as follows:

Article 17 – Criteria for involuntary placement

"1. A person may be subject to involuntary placement only if all the following conditions are met:

i. the person has a mental disorder;

ii. the person's condition represents a significant risk of serious harm to his or her health or to other persons;

iii the placement includes a therapeutic purpose;

iv. no less restrictive means of providing appropriate care are available;

v. the opinion of the person concerned has been taken into consideration. ..."

40. The relevant extracts of the explanatory memorandum to this Recommendation read as follows:

"136. ... The balance between respecting self-determination and the need to protect a person with mental disorder can be difficult, and hence it is emphasised that the person's own opinion should be explicitly considered on the issues relevant to the possible placement. For example, particularly where there is concern about the risk to the person him- or herself, s/he may have views both about the level of risks and how it might be best to address it."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 (E) AND 4 OF THE CONVENTION

41. The applicant complained that her involuntary hospitalisation had been unjustified and had been decided following a procedure in which her procedural rights had not been respected. She relied on Article 5 §§ 1 (e) and 4 of the Convention which reads as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(e) the lawful detention ... of persons of unsound mind, ...

...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

1. The parties' submissions

42. The Government submitted that the applicant had failed to exhaust domestic remedies for her claim that the domestic courts had erred in their assessment of the evidence for the need for her emergency hospitalisation. The Government asserted that the scope of the *Kúria*'s review of the case had been limited because of the applicant's failure to challenge the appeal court's assessment of evidence under Article 279 (1) of the Code of Civil Procedure

(see paragraph 22 above). They also observed that the Constitutional Court's competence in this regard had also been limited, as the assessment and weighing of evidence was a matter for the ordinary courts.

43. The applicant argued that she had not disputed the factual or evidential basis of her hospitalisation but its legal characterisation. In any event, the *Kúria* had fully reviewed her petition and had addressed all of her arguments in its decision. The *Kúria* had referred to a single issue which it had claimed not to be able to examine, namely the appeal court's assessment of the evidence. However, it had completely reassessed the available evidence when it had provided new reasons for the applicant's hospitalisation, such as her suicide attempt and her aggressive behaviour. The Constitutional Court had found that the applicant had exhausted all remedies before turning to it. The fact that the Constitutional Court had not reviewed the assessment of the evidence by the ordinary courts was a general feature of its procedure, and had had nothing to do with the scope of the *Kúria*'s review of the case.

2. The Court's assessment

44. The Court reiterates that Article 35 § 1 requires that complaints which are subsequently to be made before the Court should first have been made to the appropriate domestic courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and that all procedural means capable of preventing a violation of the Convention should have been used (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014 and, most recently, in *Mansouri v. Italy*, [GC], no. 63386/16, § 84). However, failure to exhaust domestic remedies cannot be invoked against the applicant if the competent authority has nevertheless examined the substance of the claim, despite the applicant's failure to comply with the formalities prescribed by law (see *Vladimir Romanov v. Russia*, no. 41461/02, § 52, 24 July 2008 and the other authorities cited therein). Furthermore, the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case (see *Vladimir Romanov*, cited above, § 50 and the cases cited therein).

45. Turning to the present case, the Court observes that the applicant consistently raised the same complaints in the domestic courts. All the grievances she raised before the Court had therefore been repeatedly brought to the attention of the domestic courts, giving them the opportunity to express their views on them. It is true that in her request for review by the *Kúria* the applicant did not refer to a breach of the procedural rules of weighing evidence (see paragraph 22 above), an omission which, as interpreted by the *Kúria*, prevented it from examining the appeal court's assessment of the evidence. In this connection, the Court would reiterate that it is primarily for the national courts to resolve problems of interpretation of domestic

legislation (see *Vučković and Others*, cited above, § 80). According to the interpretation given by the *Kúria*, the applicant had only partially complied with the formal requirements for a petition for review. Nevertheless, the *Kúria* went on to review the available evidence and provide its opinion on whether the conclusions of the first-instance and appeal courts as to whether the applicant's behaviour presented an imminent danger had been based on sufficient medical evidence (see paragraph 23 above). It also does not appear that this omission had any effect on the scope of the review by the Constitutional Court, since scrutinising the assessment of evidence by the ordinary courts is in any case outside the competence of the Constitutional Court. The Court finds that, since the domestic courts have fully examined the substance of the applicant's complaint challenging the grounds for her involuntary detention, she cannot be said to have failed to exhaust domestic remedies. It follows that no part of her complaint can be declared inadmissible for non-exhaustion of domestic remedies.

46. The Court rejects the Government's preliminary objections and notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

47. The applicant argued that she had not suffered from a disorder of a kind or degree justifying involuntary hospitalisation. She had not been hospitalised due to a sudden deterioration of her mental health but because of the suspicion of overmedication. She had been confused and distraught because of an unexpected and unwanted change in her environment, which was not surprising for a person in her condition. She pointed out that domestic authorities had failed to establish any imminently dangerous conduct on her part. In her view, the Government, like the domestic courts, had equated the symptoms of her disorder – confusion, disorientation, instability of mood and restlessness – with dangerousness, without specifying what the concrete danger was.

48. Moreover, her involuntary hospitalisation had been ordered without the domestic authorities having considered less restrictive alternatives to it.

49. She furthermore asserted that she had been severely sedated at the time of the court hearing, contrary to the requirements of domestic law (see paragraph 29 above). On the one hand this had severely impeded her participation in the court proceedings, and on the other hand it had made it impossible for the participants at the hearing to communicate with her in a meaningful way and for the court to make a convincing assessment of her

current behaviour and mental state. With reference to the Constitutional Court's assumption that the medical expert would certainly have taken the applicant's medication into account, she pointed out that even assuming that the expert had considered the effect of sedation on the applicant's state of health, there was no indication in the record or in the court's decision that she had explained it to the court, which therefore could not have taken it into consideration.

50. The applicant also complained of several procedural flaws: the authorities had failed to properly communicate with her support network, her family, and in particular with her son, who was summoned at the last minute and therefore could not properly prepare for the hearing. He could not arrange legal representation for his mother, consult with her or the hospital staff or read the medical documentation before the hearing. Even though the first-instance court had appointed a representative, the guardian *ad litem,* he had remained passive throughout the proceedings: he had not spoken to the applicant or her family before the hearing; had not in any way ascertained the applicant's circumstances or wishes; and had not questioned the necessity of her hospital treatment or inquired into the nature of her allegedly dangerous behaviour or about available alternative treatment. The court had not taken any measures to remedy the deficiencies in the representation of the applicant.

(b) The Government

51. The Government submitted that the applicant's involuntary placement in the psychiatric hospital had been "lawful" and "in accordance with a procedure prescribed by law" as confirmed by the *Kúria* and the Constitutional Court. They argued that the applicant's mental health condition had been of a kind that warranted her compulsory detention since it had been of a potentially life-threatening nature and the State had had a positive obligation to prevent any irreparable harm to the applicant. The first-instance court which authorised the applicant's involuntary hospitalisation had been satisfied that the applicant had demonstrated 'imminently dangerous behaviour" as defined by Article 188 of the Health Act, because her acute mental disorder had represented an imminent and serious threat to her own life, physical integrity and health. The domestic courts had also taken into account whether less restrictive alternatives to involuntary treatment had been available but had concluded that hospitalisation had been called for. The applicant's stay in the hospital had lasted no longer than had been strictly necessary to ensure that her mental state would not present a threat to her life.

52. As to the alleged breach of the applicant's procedural rights, the Government referred to the findings of the *Kúria* and the Constitutional Court (see paragraphs 23 and 28 above). The applicant had been given the opportunity to meaningfully participate in the court hearing through her son, who had been her authorised representative. Even though he had not been aware of the exact date of the hearing, he must have known that it would take

place within seventy-two hours. Although time had been short, it had not been so short as to prevent him from seeking legal advice or assistance before the hearing and he had in fact been provided with legal advice by the guardian *ad litem* at the hearing. The Government disagreed with the applicant's assertion that the only interest of hers that the guardian *ad litem* had been expected to protect was to be released from the hospital without treatment. In the present case, the guardian *ad litem* had formed his own impression of the applicant's behaviour and concluded not only that she satisfied the legal criteria for compulsory treatment but also that it would be in her best interests. Any alleged failure to represent her interests effectively had been attributable to the representative she had chosen.

2. The Court's assessment

(a) Preliminary remarks

53. The applicant complained of a violation of Article 5 § 4 of the Convention on account of the shortcomings in the judicial procedure for reviewing her emergency hospitalisation and ordering her compulsory treatment in hospital.

54. The Court reiterates that Article 5 § 4 entitles detained persons to bring proceedings for a review by a court of compliance with the procedural and substantive conditions which are essential for the "lawfulness" of, in the sense of Article 5 § 1, of their deprivation of liberty (see *Idalov v. Russia* [GC], no. 5826/03, § 161, 22 May 2012; *M.H. v. the United Kingdom*, no. 11577/06, § 74, 22 October 2013; and *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 128, 15 December 2016). At the same time Article 5 § 1 (e) of the Convention affords, *inter alia*, procedural safeguards related to the proceedings leading to the involuntary placement of an individual in a psychiatric hospital to ensure a fair and proper procedure that is devoid of arbitrariness (see *Winterwerp v. the Netherlands*, 24 October 1979, § 45, Series A no. 33; *Anatoliy Rudenko v. Ukraine*, no. 50264/08, § 104, 17 April 2014; and *M.S. v. Croatia (no. 2)*, cited above, § 114).

55. In a number of previous cases, the Court has examined complaints, such as those of the applicant, concerning procedural defects in the judicial authorisation of involuntary hospitalisation under Article 5 § 1 (e) of the Convention (see *M.S. v. Croatia (no. 2)*, cited above, §§ 114-15 and 148-60; *V.K. v. Russia*, no. 9139/08, §§ 22-42, 4 April 2017; and *Zagidulina v. Russia*, no. 11737/06, §§ 50 and 70, 2 May 2013).

56. In light of its above case-law, the Court, as the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 110-26, 20 March 2018 and *Grosam v. the Czech Republic* [GC], no. 19750/13, § 90, 1 June 2023), considers that the complaints raised by the applicant should be examined under Article 5 § 1 (e) of the Convention.

(b) Recapitulation of general principles

57. The general principles with regard to the deprivation of liberty of persons with mental health issues were summarised in *Rooman v. Belgium* ([GC], no. 18052/11, §§ 190-93, 31 January 2019) and *Denis and Irvine v. Belgium* ([GC], nos. 62819/17 and 63921/17, §§ 134-137, 1 June 2021).

58. In addition, the Court has consistently held that for the deprivation of liberty of an individual to be fair, it is essential that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation (see *Winterwerp v. the Netherlands*, 24 October 1979, § 60, Series A no. 33; and *Stanev v. Bulgaria* [GC], no. 36760/06, § 171, ECHR 2012). Effective participation means, among other things, being able to put forward matters in support of a person's claims (see *A.N. v. Lithuania*, no. 17280/08, § 91, 31 May 2016). Mental health issues may entail restricting or modifying the manner of exercise of that participation, but they cannot justify impairing the very essence of it, except in very exceptional circumstances, when the person concerned is entirely unable to express a coherent view or give proper instructions to a lawyer (*A.N. v. Lithuania*, cited above, § 90; and *D.D. v. Lithuania*, no. 13469/06, § 118, 14 February 2012). Special procedural safeguards may be required to protect the interests of persons who, on account of their mental disabilities, are not fully capable of acting for themselves (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 113, ECHR 2014; and *D.D. v. Lithuania*, cited above, § 118).

59. It follows from the foregoing that where a person is detained in a psychiatric hospital on the grounds of a mental health condition and his or her perceived dangerousness, he or she should receive legal assistance in any proceedings relating to his or her detention. The Court reiterates that the mere appointment of a lawyer who does not actually provide legal assistance in the proceedings does not satisfy the requirements of necessary "legal assistance" for persons deprived of their liberty under the head of "unsound mind", under Article 5 § 1 (e) of the Convention (see *M.S. v. Croatia (no. 2)*, cited above, § 154; and *V.K. v. Russia*, cited above, §§ 35-38). Meaningful contact between the representative and the applicant is crucial in order to ensure that her legitimate interests are protected and that all her arguments are put and tested, in an adversarial manner. In addition, effective legal representation of persons with disabilities requires an enhanced duty of supervision of their legal representatives by the competent domestic courts (see *M.S. v. Croatia (no. 2)*, cited above, § 154; and *N. v. Romania*, no. 59152/08, § 196, 28 November 2017).

(c) Application of the general principles to the present case

60. It is common ground between the parties that the applicant's involuntary placement in the psychiatric hospital constituted a "deprivation of liberty" within the meaning of Article 5 § 1 (e) of the Convention, and the Court sees no reason to hold otherwise. Nor is it disputed that the applicant had moderate dementia at the time of her involuntary admission (see paragraphs 5 and 7 above).

61. However, the parties disagree as to whether the authorities were justified in concluding that the applicant's conduct constituted imminently dangerous behaviour which required her to be hospitalised against her will, and as to whether her hospitalisation took place in a fair and proper procedure.

62. The Court will first examine whether the applicant's detention was secured by a fair and proper procedure required by Article 5 § 1 (e) of the Convention. As regards the applicant's allegation that she was not enabled to participate meaningfully in the first instance proceedings as a result of the ineffective legal assistance provided to her and the medications she received, the Court observes the following.

63. The first-instance court appointed a guardian *ad litem* whose task was to represent the applicant's interests in the court proceedings. The presence of the applicant's authorised representative did not relieve the guardian of this responsibility, as the court ultimately did not dismiss him from the proceedings precisely because the authorised representative was not able to fully protect the applicant's interests because of his lack of legal expertise (see paragraph 11 above).

64. In response to the applicant's complaint about the inaction of the guardian *ad litem*, the domestic courts were satisfied that the record of the hearing showed that the guardian had informed the applicant of her rights, although the record gave no details of when or how that had happened. The applicant denied that it had happened at all, as the hearing had not been interrupted to allow a conversation between her and the guardian. Even if it were to be accepted that the guardian had informed the applicant and her son about the subject-matter of the court proceedings, the record of the hearing does not contain any information as to the extent to which he did so. Given that the hearing itself lasted only seventeen minutes, during which the hospital and the medical expert presented their opinions and the applicant was heard, the Court has serious doubts that the guardian was able to provide sufficient meaningful information to the applicant.

65. In any event, the Court considers that the role of the representative is twofold: not only to inform the person of her rights and to advise her on the most appropriate course of action, but also to explore her wishes and to seek her instructions in order to defend effectively her position and safeguard her interests throughout the proceedings.

66. However, according to the applicant's uncontested statement, the guardian failed to visit the applicant before the hearing, as required under

section 201 (5) of the Healthcare Act. Moreover, there is no indication in the case file that he had familiarised himself with the applicant's situation or the circumstances surrounding her hospitalisation before the hearing or that he took any other measures to protect the rights of the applicant. He was present at the hearing, but made no submissions on her behalf. At the end of the hearing, he endorsed the hospital's request for involuntary hospitalisation, considering it was necessary for the protection of the applicant's health.

67. The Court notes that the guardian *ad litem*'s conduct as described above is not an isolated case: both the Hungarian Commissioner for Fundamental Rights and the Working Group of the *Kúria* have pointed out that the underperformance of guardians *ad litem* is a systemic problem. Their investigation into the issue unanimously concluded that the highly formalistic procedure followed by court-appointed representatives in cases of this type was not in line with their statutory purpose and role (see paragraphs 32 and 35 above).

68. The Court emphasises that such attitude is also incompatible with the requirement of effective legal representation under the Convention. The Court has already underlined in previous cases that the mere appointment of a lawyer who does not provide legal assistance in the proceedings does not satisfy the requirements of necessary "legal assistance" under Article 5 § 1 (e) of the Convention (see cases cited in paragraph 59 above). The Court has also emphasised that effective representation in cases of this type requires meaningful communication between the representative and the represented person and that the domestic courts exercise close supervision of the legal representatives (ibid.).

69. However, these requirements were not met in the present case. The Court finds that the guardian *ad litem* unconditionally endorsed the hospital's application without attempting to understand and represent the applicant's wishes. This was a serious defect in her representation in which domestic courts saw no fault and which they made no attempt to remedy.

70. In addition to the shortcomings of her representation, the alleged sedation of the applicant raises further doubts as to whether the authorities paid sufficient attention to facilitating the applicant's meaningful participation in the court proceedings.

71. The applicant claimed that, heavily sedated, she could participate in the hearing only formally. It appears from the admission report that she was given tranquillisers to tackle her restlessness and agitation. According to the medical report issued on her release from the hospital, she was given several antipsychotic medications during her compulsory treatment.

72. Although the record of the hearing shows that the hospital's representative reported on the applicant's medical treatment at the beginning of the hearing, it does not give any details of this treatment, nor does it indicate what medication the applicant had received before the hearing and the effect it might had on her current condition. Even if, in line with the

Constitutional Court's assumption (see paragraph 26 above), the medical expert did take into account the applicant's medication, it seems that at no stage in the proceedings was the extent to which the medication might have affected the applicant's ability to meaningfully participate in the hearing explained to the court, by the medical expert or otherwise.

73. The Court is aware that the primary aim of therapy following a patient's admission is to eliminate his or her perceived immediately dangerous behaviour (see paragraph 25 above). However, it observes that if a patient is given tranquillising medication on or after admission, that may not only make it difficult for the court to benefit from hearing the patient in person so as to properly assess his or her current mental state and conduct, but also may make it difficult for the patient to communicate with his or her representative and to participate actively in the proceedings. Consequently, the issue of medication and its effects requires careful consideration by both mental health professionals and the courts, but the Court sees no evidence that this has been done in the present case.

74. The foregoing considerations are sufficient to enable the Court to conclude that the national authorities failed to comply with the procedural requirements necessary for the applicant's involuntary hospitalisation, as they did not ensure that the proceedings were lawful and devoid of arbitrariness, as required under Article 5 § 1 (e) of the Convention.

75. This conclusion obviates the need for the Court to examine whether the national authorities met the substantive requirement for the applicant's involuntary hospitalisation by showing that her mental condition had required the deprivation of her liberty.

76. There has accordingly been a violation of Article 5 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. 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

78. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

79. The Government argued that the applicant's claim was excessive.

80. Ruling on an equitable basis, the Court awards the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

81. The applicant also claimed EUR 7,950 for the costs and expenses incurred before the Court. That sum corresponded to fifty-three hours of legal work billable by her lawyer at an hourly rate of EUR 150.

82. Again, the Government argued that the applicant's claim was excessive.

83. 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 were actually and necessarily incurred and are reasonable as to quantum (see, among many other authorities, *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 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, the following amounts, to be converted into the currency of the respondent State, at the rate applicable at the date of settlement:
      (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 5,000 (five thousand 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;

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

Done in English, and notified in writing on 27 May 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President