

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

FOURTH SECTION

CASE OF N. v. ROMANIA

(Application no. 59152/08)

JUDGMENT
(extracts)

STRASBOURG

28 November 2017

FINAL

28/02/2018

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



In the case of N. v. Romania,

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

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Faris Vehabović,
Iulia Motoc,
Carlo Ranzoni,
Georges Ravarani, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 7 November 2017,

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

PROCEDURE

1. The case originated in an application (no. 59152/08) 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, Mr N. ("the applicant"), on 26 November 2008. The President of the Section acceded to the applicant's request not to have his name disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicant, who had been granted legal aid, was represented by Mr C. Cojocariu, a lawyer practising in London. The Romanian Government ("the Government") were represented by their Agent, Mrs C. Brumar, Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that his psychiatric detention for over sixteen years was unlawful and unjustified, complaining about the lack of procedural safeguards on supervision of the lawfulness of his detention and his inability to obtain reparation .... He relied in particular on Articles 5, 6 and 8 of the Convention.

4. On 11 September 2013 the application was communicated to the Government, initially under Article 8 of the Convention and subsequently under Articles 5 and 6 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1959. He is currently detained at Săpoca Psychiatric Hospital, in a section of the hospital located in the municipality of Ojasca (Buzău County).

6. The applicant has been in receipt of a second-degree disability allowance since 1993.

A. The applicant's prosecution and psychiatric detention

7. On 29 January 2001, following the publication of an article in the national press and a programme broadcast on a national television channel, the police operating at Bucharest police station no. 20 initiated a criminal prosecution against the applicant. He was charged with incest and sexual corruption of his two under-age daughters, aged 15 and 16. He was alleged to have had sexual intercourse with his elder daughter and forced both his daughters to be present while he was having sexual intercourse with his wife.

8. On the same day the applicant was questioned by the police in the presence of an officially appointed lawyer regarding the charges against him, before being placed in police custody for twenty-four hours.

9. On 30 April 2001 the applicant, assisted by an officially appointed lawyer, was questioned by a prosecutor concerning the same charges.

10. On the same day the prosecution, with reference to Article 114 §§ 1 and 2 of the Penal Code (CP), ordered the applicant's provisional detention in a psychiatric hospital with a view to conducting a medical examination to assess his capacity for discernment. The prosecution noted in that regard that a paranoid affective psychosis diagnostic had been posited on several occasions between 1994 and 1999. It stated the following:

> "... in the present case there is sufficient circumstantial evidence of the precarious state of health of the accused, who represents an extremely serious danger to society given that he is liable to commit further such antisocial acts."

11. On the same day the applicant was admitted to the Alexandru Obregia Psychiatric Hospital in Bucharest. He underwent psychiatric examinations which found, *inter alia,* paranoid impulsive tendencies with high conflict potential. Furthermore, the applicant's state was described as comprising irritability, suspicion, interpretative tendencies and potential aggression.

12. A forensic medical report was drawn up on 2 November 2001 establishing that the applicant suffered from chronic paranoid schizophrenia

and lack of discernment. It recommended putting in place the compulsory medical treatment provided for by Article 113 CP.

13. A preliminary investigation was also instigated against the applicant for the rape of his wife.

14. The prosecution heard the applicant's wife and two daughters.

15. By decision of 27 February 2002 the prosecution, in the absence of a medical certificate and since the applicant's daughter had not confirmed the sexual relations with her father, ordered the closure of the criminal proceedings against the applicant for incest. Drawing on the statements of his two daughters, it also concluded that the applicant had forced them to be present while he was having sexual intercourse with his wife, thus committing offences of sexual corruption of minors, but decided to close the proceedings on that count owing to the applicant's lack of discernment, as found in the forensic medical report of 2 November 2001 (see paragraph 12 above). The prosecution further dropped the rape charge on the grounds that the applicant's wife had not lodged a criminal complaint against him. Lastly, it referred the case file to the competent court for confirmation of the preventive measure of medical detention.

16. By decision of 22 April 2002 Bucharest District Court 6 upheld the medical detention order. Listing the criminal charges against the applicant, the court stated the following:

> "In the light of the findings of the psychiatric forensic medical report that N. suffers from chronic paranoid schizophrenia and lacks discernment as regards the offences he committed, and having regard to the recommendations of the [reporting] committee that the preventive detention measure should be imposed on the accused, the court accedes to the [prosecution's] request and, pursuant to Article 114 CP, confirms the provisional medical detention order and informs the Bucharest Health Department of the implementation of that order."

17. The applicant did not attend the hearing, nor was he represented by a lawyer in court.

18. The decision was posted on the door to the applicant's home and in the town hall of Bucharest District 6, where the applicant's home was located.

B. Applicant's detention in Alexandru Obregia and Poiana Mare Psychiatric Hospitals

19. From 30 January 2001 to 20 January 2003 the applicant was detained in the Alexandru Obregia Psychiatric Hospital. On 21 January 2003 he was transferred to the Poiana Mare Psychiatric Hospital, where he remained until 29 January 2006. The applicant was provided with a neuroleptic- and tranquilliser-based treatment.

...

D. First confirmation of detention by judgment of Buzău District Court on 11 September 2007

32. In March 2007, after the entry into force of the amendments to the Code of Criminal Procedure (CPP) requiring periodic and automatic judicial review of the detention (see paragraph 90 below), the judge of Buzău District Court ("the delegated judge") ordered a psychiatric forensic medical report.

33. In July 2007 the competent medical board drew up a report based on the results of an examination of the applicant, the medical documentation transmitted by the psychiatric hospital, the report by his GP, a social welfare inquiry concerning the applicant conducted on 3 May 2006, the 22 April 2002 decision of Bucharest District Court 6 and the forensic medical report of 2 November 2001.

The board found that during his detention the applicant had expressed delusions of grandeur with transient psychotic relapses, had endeavoured to conceal his symptoms, had behaved in a calm, composed manner, had accepted his treatment, had refrained from stirring up trouble with the other patients and had shown little hostility during the treatment. It pointed out, however, that he had been hostile during the examination and had expressed delusional ideas of injustice and his intention to remedy the latter. It concluded that the applicant was suffering from chronic paranoid schizophrenia and that, having regard to the medical documentation, to the evolution in the patient's condition during his detention and to the psychiatric examination in issue, the detention measure should remain in place.

34. On 15 August 2007 the delegated judge invited Buzău District Court to replace the detention measure provided for in Article 114 CP with the compulsory medical treatment measure provided for in Article 113 CP.

35. On 11 September 2007 the applicant, assisted by an officially appointed lawyer, was heard by the court. He requested his release, seconded by his lawyer.

36. By decision of the same day, Buzău District Court decided to order the applicant's continued psychiatric detention. It reasoned as follows:

> "By Criminal Decision No. 588 of 22 April 2002, Bucharest District Court 6 ordered N.'s medical detention on the grounds that he had been charged with having committed the offence of incest, consisting of sexual relations with his 16-year-old daughter, in 2000, and the offence of sexual corruption on the grounds that on 21 January 2001 he had sexual intercourse with his wife in the presence of his two daughters.
>
> The psychiatric forensic medical report [of July 2007] shows that the patient suffers from chronic paranoid schizophrenia and points to the advisability of maintaining the preventive detention measure laid down in Article 114 CP.
>
> Having regard to the foregoing, the court ... decides to maintain the medical detention measure (Article 114 CP) imposed on patient N."

37. The applicant took cognisance of that decision in summer 2008, when he underwent a further forensic medical examination. He appealed.

38. By final decision of 19 December 2008 Buzău County Court, referring to the reasoning of the Court of First Instance, dismissed the appeal as manifestly ill-founded after having heard the applicant, assisted by an officially appointed lawyer.

E. Automatic review, and review at the applicant's request, of the detention measure

39. The applicant's detention measure was made subject to several judicial reviews by Buzău District Court and Buzău County Court. It transpires from the decisions adopted, of which the Court has copies, that the applicant was heard by both courts during the different sets of proceedings.

40. He was assisted by various officially appointed lawyers, who, in the proceedings completed before 2016, had confined themselves to referring to the findings of the forensic medical assessments carried out, and had either left it to the discretion of the courts whether or not to maintain the measure or objected to the lifting thereof.

41. Apart from the decisions adopted after 2015, the case file does not indicate whether the prior decisions had been served on the applicant.

42. According to the forensic medical reports drawn up after each review, the applicant, who had not fully acknowledged the fact of his mental illness, had been calm, had not refused his treatment and had refrained from causing trouble with the other patients. On the other hand, the reports stated that he had vehemently denied having committed the criminal offences with which he had been charged, claiming that his former wife had been plotting against him.

1. Reviews carried out in 2008

43. By decision of 13 October 2008 Buzău District Court maintained the detention measure in respect of the applicant. The court referred to the 22 April 2002 decision and to a forensic medical report drawn up following an examination of the applicant in May 2008, which had recommended maintaining the measure. On 9 January 2009, on appeal from the applicant, Buzău County Court upheld that decision.

2. Reviews carried out in 2010

44. By decision of 18 February 2010 Buzău District Court dismissed a request submitted by the applicant for the lifting of the detention measure. The court referred to a forensic medical report drawn up after an examination of the applicant the same month, which had recommended

maintaining the measure and described the applicant's delusional ideas concerning the setting up of a new State, his lack of feasible future plans and the fact that he had not fully accepted his drug therapy.

45. By decision of 1 April 2010 Buzău District Court maintained the detention measure in respect of the applicant. It referred to the decision of 22 April 2002 to a forensic medical report drawn up after an examination of the applicant in December 2009, insofar as it recommended maintaining the measure and described the applicant's delusional ideas concerning the setting up of a new State and his lack of realistic future plans.

46. Furthermore, although this aspect was not mentioned by the court, it transpires from that report that the applicant's GP had noted an erotomaniac obsession with his former wife, which had indicated a total incapacity for social reintegration and would most likely have triggered conflicts or unforeseeable, potentially dangerous situations had he returned to the apartment where he had lived with his family. The report further noted that the applicant's friend, who had attended most of the medical boards' meetings, had come down emphatically in favour of the applicant's release, claiming that he would accommodate him indefinitely in the apartment which he shared with his mother. However, the assessment board doubted the reality of such support proffered by someone who was himself suffering from psychiatric problems. On the other hand, the report mentioned that the applicant had been plainly rejected by his daughters and his former wife, and that despite the rejection by his former wife and the fact that he himself considered that his detention was the result of scheming on her part, he intended to get back together with her if he was released.

47. By decision of 22 April 2010 the Buzău Court of First Instance dismissed the applicant's second application for release on the grounds that its decision of 18 February 2010 had meanwhile become final and was therefore *res judicata*. During the proceedings a forensic medical report had been drawn up on 9 March 2010, reaching conclusions similar to the findings of the report submitted in December 2009 (see paragraph 45 above).

3. Reviews carried out in 2013

48. In November 2010, May and November 2011 and April 2012 the delegated judge requested the Buzău Institute of Forensic Medicine to carry out psychiatric assessments with a view to periodic reviews of the need to maintain the applicant's psychiatric detention.

49. The Institute of Forensic Medicine examined the applicant on the aforementioned dates but did not draw up or forward its reports until November 2013. The reports confirmed the diagnosis of the applicant's condition and proposed maintaining the detention measure.

50. By four separate decisions adopted on 17 and 19 December 2013, the Court of First Instance, citing the case-law of the Court in matters of

detention of persons suffering from mental disorders, maintained the detention measure. It referred to the findings of the above-mentioned forensic medical reports. In its decision of 17 December 2013 the court further had regard to a forensic medical report drawn up following an examination of the applicant carried out a few days previously, in December 2013. Furthermore, it referred, broadly, to the "aim of the preventive measures, which was to put an end to a situation of danger and prevent the perpetration of acts punishable under criminal law", and concluded that the criteria set out in Article 434 § 1 CPP had been satisfied.

4. Judicial reviews carried out in 2014

51. By three separate decisions adopted on 4 February 2014, Buzău District Court maintained the applicant's detention measure on the basis of three psychiatric forensic medical reports drawn up following examinations of the applicant in November 2012, May 2013 and November 2013. The Court has not received copies of those reports and decisions.

52. On 1 July 2014 Săpoca Psychiatric Hospital applied to the courts to declare the applicant incapable and place him under guardianship (see paragraph 77 et seq. below for the conduct of the related proceedings).

5. Review carried out in 2015

53. By decision of 19 February 2015, citing the Court's case-law in matters of detention of persons suffering from mental disorders, Buzău District Court maintained the detention measure in respect of the applicant. It referred to a forensic medical report drawn up after an examination of the applicant in September 2014, which recommended maintaining the measure and referred to the "aim of the preventive measures, which was to put an end to a situation of danger and prevent the perpetration of acts punishable under criminal law".

54. The operative part of the decision was served on the applicant on 26 February 2015.

55. In April 2015 the applicant appealed to the Judicial Inspection Board of the Higher Council of the Judiciary against the alleged practice of Buzău District Court of conducting retrospective reviews of the need to maintain the detention measure. By decision of 15 June 2015 the Judicial Inspection Board dropped the applicant's complaint. It confirmed the existence of the practice criticised by the applicant, but pointed out that it had been caused by the medical authorities' delay in forwarding their expert reports and not in any breach by the judges of their attributions.

6. Reviews carried out in 2016

(a) Courts' decisions

56. On 3 September 2015 the delegated judge requested the Buzău Institute of Forensic Medicine to conduct a further psychiatric expert assessment with a view to periodically reviewing the need to maintain the applicant's psychiatric detention. The applicant filed a separate action seeking the replacement of the detention measure with a compulsory medical treatment measure.

57. On 23 September 2015 the Forensic Medical Board also examined the applicant. The applicant's lawyer representing him in the present application before the Court sent a reasoned letter to the Board strongly advocating the replacement of the measure implemented in respect of his client.

58. On 1 October 2015 the Board drew up its forensic medical report recommending the replacement of the detention measure with a compulsory medical treatment measure. It emphasised that the persistence of the applicant's delusional ideas concerning the setting up of a "new State" and his lack of social and family support, a factor conducive to social reintegration, supervision of his medical treatment and the management of the applicant's daily needs relating to the purported "new State", had justified maintaining the detention up until then. It noted that the applicant had not been aggressive to others or to himself during his detention. In that context, it welcomed the steps taken by Săpoca Hospital to place the applicant under guardianship, which it considered appropriate in the perspective of his release, given that the applicant had been rejected by his family (his brother, sister, former wife and daughters). Finally, the Board recommended that the social welfare services of the applicant's district of residence should be informed that they had to take the necessary action with a view to releasing him.

59. On 22 October 2015 Buzău District Court, which was responsible for the review, ordered a fresh forensic medical report from the National Institute of Forensic Medicine (IFM) in Bucharest.

60. On 10 November 2015 the applicant underwent a medical examination at the IFM.

61. On 12 April 2016 the IFM submitted its expert report, which stated, in particular, that:

– the applicant was suffering from chronic delusional disorder with no prospect of improvement, but rather with future aggravation of the illness due to aging;

– the illness as manifested in the applicant did not point to any risk of a danger to society, but the lack of feasible plans for the future foreshadowed future conflicts, a risk of advanced social deterioration and the impossibility of monitoring the evolution of his illness;

– the applicant lacked any social support from his family or other persons of trust.

Under those conditions, the forensic medical board pointed out that the case presented a genuine psychiatric and deontological dilemma. Indeed, it considered that although, from the psychiatric point of view, the applicant could be released subject to compulsory medical treatment on the basis of Article 109 CP, that measure was inconceivable in the absence of social support. Consequently, it proposed provisionally maintaining the detention until the social welfare services could transfer the applicant to a specialised institution capable of providing him with appropriate living conditions and treatment.

62. By decision of 27 May 2016 the Buzău Court of First Instance, referring to the findings of the 12 April 2016 forensic medical rapport (see paragraph 61 above), ordered the maintenance of the detention measure.

63. The applicant appealed to Buzău District Court against that decision. He was represented by an officially appointed lawyer, who argued that the applicant's wishes should be complied with. Questioned by the court, the applicant stated that he would live with his former wife and one of his daughters in their apartment. He added that he had a retirement pension.

64. By judgment of 29 August 2016 Buzău County Court upheld the 27 May 2016 decision. It held as follows:

> "Given the absence of improvement in the patient's state of health and the fact that the members of his family cannot monitor his continued medical treatment, and having regard to the nature of the charges against him which had resulted in his medical detention, family members against whom [the applicant] has committed antisocial acts cannot be expected to cohabit with him.
>
> Nevertheless, the director of the establishment [where the applicant is detained] must inform the social welfare services responsible for transferring [the applicant] to a specialised institution capable of providing proper living conditions and treatment."

(b) Measures taken by the national administrative and hospital authorities

65. On 6 September 2016 the Director of Săpoca Hospital invited the Directorate General of Social Assistance and Child Welfare ("DGASPC") in Bucharest District 6 to adopt welfare measures in respect of the applicant pursuant to the instructions set out in the forensic medical report of 12 April 2016.

66. By letter of 29 September 2016 the DGASPC replied that the applicant's former wife had informed it that she did not intend to be involved in any way in the process leading up to the applicant's release. Furthermore, the DGASPC pointed out that it had contacted the social welfare services in the county of residence of the applicant's sister with an eye to his possible placement with her. It also stated that the only centre in Bucharest District 6 which took in persons suffering from neuropsychiatric disorders could not admit the applicant owing to a lack of available places. Finally, it explained that it had also unsuccessfully attempted to contact other specialised and residential centres.

67. On 15 November 2016 the Director of Săpoca Hospital contacted the municipality of Unguriu, which had meanwhile been assigned the guardianship of the applicant .... The Director informed the municipal authorities the implementation of the preventive detention measure was temporary, and that they were required to act in the interests of the applicant, particularly with a view to his possible placement in a specialised institution after his release.

68. On 21 November 2016 Unguriu municipality replied that the guardianship order was not yet final and that it therefore could not act in respect of the applicant.

7. Reviews carried out in 2017

(a) Decision to replace the detention order

69. On 12 September 2016 the applicant underwent a further forensic medical examination.

70. The forensic medical report drawn up on 25 January 2017 recommended replacing the detention measure with a compulsory medical treatment order in view of the applicant's "low level of dangerousness (while on treatment), compliance with the rules, absence of incidents, [and] the lengthy period of supervision". The report mentioned in particular:

– the existence of a single, strange and systematic delusionary theme concerning the creation of a "united Somali State", which delusion did not however alter his compliance with hospital rules;

– lack of conflict situations and of incidents pointing to potentially aggressive behaviour;

– proper therapeutic cooperation during detention, despite his purely formal acquiescence in the reality of his illness and need for treatment;

– absence of antisocial precedents – apart from the acts noted during his placement in detention – or consumption of psychoactive substances (drugs, alcohol);

– negative effect of the extension of detention for social reasons on the development of the applicant's illness and physiological state, and

– the guardianship order.

The report nevertheless emphasised the risk of decompensation of the illness, involving possible negative social consequences should the aftercare provided to the applicant by the body assigned guardianship prove inadequate.

71. On 21 February 2017 the applicant was heard by Buzău District Court. He was represented by an officially appointed lawyer, who advocated replacing the detention measure.

72. By final decision given on the same day, Buzău District Court ordered the replacement of the detention measure with a compulsory treatment order until the applicant had made a full recovery. It referred to

the forensic medical report of 25 January 2017 (see paragraph 70 above) and to the "aim of the preventive measures, which was to put an end to a situation of danger and prevent the perpetration of acts punishable under criminal law".

b) Measures taken by the national administrative and hospital authorities

73. On 7 March 2017 the applicant asked to remain in psychiatric hospital until his social situation had been settled.

74. On 8 March 2017 the lawyer representing the applicant before the Court sent a letter to Săpoca Hospital recommending, in the framework of enforcement of the decision of 21 February 2017, the applicant's ultimate reintegration into society rather than his placement in a residential centre. He emphasised that releasing the applicant without adequate support would condemn him to vagrancy, destitution and the deterioration of his physical and mental health. Lastly, he requested the setting up of an interdisciplinary commission responsible for identifying the action to be taken on the applicant, on the model of the efforts expended in other countries to deinstitutionalise persons in medical detention.

75. On 9 March 2017 the applicant was transferred to another section of the same hospital for persons suffering from chronic illnesses.

76. On 14 March 2017 the Director of Săpoca Hospital invited la DGASPC to implement assistance measures in respect of the applicant pursuant to the final decision ordering the replacement of the detention measure. It also attempted, unsuccessfully, to contact two foundations in Bucharest for the same purpose.

...

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Criminal Code (CP)

83. The relevant provisions of the former CP in force until 1 February 2014 read as follows:

Article 111 – Purpose of security measures

"Security measures are aimed at overcoming a state of danger and preventing the commission of acts provided in criminal law (*faptelor prevăzute de legea penală*).

Security measures are taken with regard to persons who committed acts provided in criminal law.

Security measures can be taken even if no penalty was applied to the perpetrator ..."

Article 113 – Obligation to undergo medical treatment

"If the perpetrator (*făptuitorul*), because of illness or chronic intoxication by alcohol, drugs or other such substances, represents a danger to society, he/she can be obliged to regularly attend medical treatment until he/she regains health.

When the person with regard to whom this measure was ordained does not regularly attend treatment, hospitalisation can be ordained.

...

The measure of obligation to undergo medical treatment can be taken provisionally also during criminal prosecution or trial."

Article 114 – Admission into a medical facility

"When the perpetrator is mentally ill or a drug addict and he/she is in a state that represents danger to society, the measure of admission into a specialised medical institute can be taken, until the person regains health.

This measure can be taken provisionally also during criminal prosecution or trial."

84. Article 110 on medical detention of the new CP, which came into force on 1 February 2014, lays down that the medical detention order should remain in force until the detained person has made a full recovery or until his condition has improved to the extent that he no longer poses a danger to society.

B. Code of Criminal Procedure (CPP)

...

89. The relevant provisions of the former CPP in force at the time of the decision to detain the applicant read as follows:

Article 433

"...

2. Where the detention is no longer necessary, the medical facility in which the person is detained must so inform the court of the district in which the facility is located."

Article 434

"The court, having applied to the public prosecutor pursuant to Article 433 § 2 and been apprised of the prosecutor's, the lawyer's and, if necessary, the detained person's conclusions, shall order either the lifting of the measure or its replacement with a compulsory medical treatment order.

The lifting or replacement of the detention order may be requested either by the detained person or by the public prosecutor. In both cases, the court shall seek the opinion of the medical centre accommodating the detained person.

Where the detained person does not have a lawyer of his choosing, a lawyer shall be officially appointed [to represent him] ..."

Article 435

"Where the compulsory medical treatment order or medical detention order was issued provisionally during the criminal proceedings or the trial hearing, it shall be enforced by the public prosecutor or the judicial authority having issued the order.

The provisions of Articles 430-434 shall apply *mutatis mutandis*."

90. Following the amendments under Law No. 356/2006, which came into force on 6 September 2006, Article 434 required the court to hear the detained person where his appearance in court was possible, as well as the specialist who drew up the forensic medical report used in the case, if necessary. Where the replacement or lifting of the measure was requested by the detained person or by the prosecutor, the court had to order the preparation of a forensic medical report rather than seeking the opinion of the medical centre in which the person was detained. Furthermore, the delegated judge with the court of first instance of the area where the medical centre accommodating the detained person was located had to verify periodically, but at least every six months, whether the detention was still necessary. To that end the delegate judge ordered the preparation of a forensic medical report on the detained person's state of health and, on receipt of the report, requested the court to adjudicate on the maintenance, replacement or lifting of the measure.

91. The new CPP entered into force on 1 February 2014. Article 569 § 3 CP now required the delegated judge to verify, at least once a year, whether the detention remained necessary.

...

93. Article 198 § 4 (c) and (f) of the CPP as in force up until 1 February 2014 had allowed the judge to impose a fine on a legal expert (a natural or legal entity) prevaricating or failing in the duty to submit a report to the court. Article 283 § 4 (c) and (f) of the new CPP contains similar provisions.

...

III. RELEVANT INTERNATIONAL DOCUMENTS

100. The relevant provisions of several documents adopted in the framework of the United Nations, the Council of Europe and the European Union are described in the judgment in the case of *M.S. v. Croatia (no. 2)* (no. 75450/12, §§ 45-61, 19 February 2015). Some of the documents which are particularly relevant to the present case are quoted below.

A. United Nations

101. The UN Convention on the Rights of Persons with Disabilities ("CRPD"), adopted by the General Assembly of the United Nations on 13 December 2006 (Resolution A/RES/61/106), is geared to promoting, protecting and ensuring full enjoyment of all the human rights and fundamental freedoms by people with disabilities and promoting respect for their intrinsic dignity. At the end of September 2016 it had been ratified by 44 of the 47 member States of the Council of Europe. Romania ratified it on 31 January 2011. The relevant provisions of that Convention read as follows:

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."

Article 19 – Living independently and being included in the community

"States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;

b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs."

102. In September 2015, at its 14th Session, the Committee on the Rights of Persons with Disabilities adopted the Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities, which replaced the Declaration which they had adopted on the same subject in September 2014 (see, for the extracts relevant to the present case, *Hiller v. Austria*, no. 1967/14, § 36, 22 November 2016). The relevant parts of those Guidelines read as follows:

"III. The absolute prohibition of detention on the basis of impairment

6. There are still practices in which States parties allow for the deprivation of liberty on the grounds of actual or perceived impairment. In this regard the Committee has established that article 14 does not permit any exceptions whereby persons may be detained on the grounds of their actual or perceived impairment. However, legislation of several States parties, including mental health laws, still provide instances in which persons may be detained on the grounds of their actual or perceived impairment, provided there are other reasons for their detention, including that they are deemed dangerous to themselves or to others. This practice is incompatible with article 14 as interpreted by the jurisprudence of the CRPD committee. It is discriminatory in nature and amounts to arbitrary deprivation of liberty.

... [A]rticle 14 (1) (b) [CRPD] prohibits the deprivation of liberty on the basis of impairment even if additional factors or criteria are also used to justify the deprivation of liberty. ...

9. Enjoyment of the right to liberty and security of the person is central to the implementation of article 19 on the right to live independently and be included in the community. The Committee has stressed this relationship with article 19. It has expressed its concern about the institutionalization of persons with disabilities and the lack of support services in the community, and it has recommended implementing support services and effective deinstitutionalization strategies in consultation with organizations of persons with disabilities. In addition, it has called for the allocation of more financial resources to ensure sufficient community-based services.

IV. Involuntary or non-consensual commitment in mental health institutions

10. Involuntary commitment of persons with disabilities on health care grounds contradicts the absolute ban on deprivation of liberty on the basis of impairments (article 14(1)(b)) and the principle of free and informed consent for health care (article 25). The Committee has repeatedly stated that States parties should repeal provisions which allow for involuntary commitment of persons with disabilities in mental health institutions based on actual or perceived impairments. Involuntary commitment in mental health facilities carries with it the denial of the person's legal capacity to decide about care, treatment, and admission to a hospital or institution, and therefore violates article 12 in conjunction with article 14 [CRPD]. ...

VIII. Detention of persons unfit to plead in criminal justice systems and/or lacking criminal responsibility

16. The Committee has established that declarations of unfitness to stand trial or non-responsibility in criminal justice systems and the detention of persons based on

those declarations is contrary to article 14 of the Convention since it deprives the person of his or her right to due process and safeguards that are applicable to every defendant. The Committee has also called for States parties to remove those declarations from the criminal justice system. The Committee has recommended that 'all persons with disabilities who have been accused of crimes and... detained in jails and institutions, without trial, are allowed to defend themselves against criminal charges, and are provided with required support and accommodation to facilitate their effective participation', as well as procedural accommodations to ensure fair trial and due process. ...

XI. Security measures

20. The Committee has addressed security measures imposed on persons found not responsible due to 'insanity'. Initially, the Committee requested that States parties modify legislation to ensure due process guarantees for the application of security measures to persons found to be exempt from criminal responsibility, and to ensure that persons with disabilities are subject to the same guarantees and conditions as those applicable to any other person. More recently, the Committee has also recommended eliminating security measures including those which involve forced medical and psychiatric treatment in institutions, while expressing concern about security measures that involve indefinite deprivation of liberty and absence of regular guarantees in the criminal justice system."

103. In the findings which it adopted on 2 September 2016 in the framework of Communication No. 7/2012 brought by Marlon James Noble against Australia, the Committee on the Rights of Persons with Disabilities found a violation of Article 14(1)(b) CRPD on the grounds that the author, who had an intellectual disability, had been detained in prison after the criminal proceedings against him on several charges of sex abuse had been discontinued on the grounds that he had been declared unfit to plead. The Committee emphasised that the national authorities had acknowledged that prison was not the appropriate environment for the author but that his imprisonment was warranted owing to the lack of alternatives and available social services. The Committee concluded that the person's detention had been ordered after the examination by the national authorities of the possible consequences of his intellectual disability, in the absence of any criminal conviction, which had made his disability the main reason for his detention, in breach of Article 14(1)(b) CRPD. In its findings the Committee further criticised the fact that the author had never had the opportunity to have the criminal charges against him determined and his status as an alleged sexual offender potentially cleared, owing to his intellectual disability. It observed that that situation had pointed to discriminatory treatment and amounted to a breach of the author's right of access to justice and the right to a fair trial.

104. A report presented in July 2005 by the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health to the UN Commission on Human Right following his visit to Romania from 23 to 27 August 2004 (E/CN.4/2005/51/Add.4), included the following remarks:

> "65. A primary concern of the Special Rapporteur is the continuing widespread provision of mental health care in large psychiatric institutions, with inadequate rehabilitation services, and the insufficient number of community-based mental health-care and support services. The centralized and institutionalized model of care denies those with mental disabilities the rights to be, as far as possible, treated and cared for in the community in which they live, and to live and work in the community. The Special Rapporteur emphasizes that the right to health gives rise to an entitlement to health care, including mental health care, which is geographically accessible, designed to improve the health status of patients, and scientifically and medically appropriate."

105. The relevant parts of the report presented in April 2016 by the Special Rapporteur on Human Rights and Extreme Poverty to the UN Human Rights Council on his mission to Romania from 2 to 11 November 2015 (A/HRC/32/31/Add.2) read as follows:

> "45. ... Romania still has high levels of institutionalization of adults with disabilities. While the deinstitutionalization of persons with disabilities has long been a strategic objective, all too few concrete measures have been undertaken to realize this goal. According to the authorities, at least 17,567 adults with disabilities still remain in residential institutions as of 30 June 2015.
>
> 46. The Special Rapporteur visited two residential institutions in Prahova county. At one, devoted to the recovery and rehabilitation of adults with mental disabilities, the Director made it clear that none of the residents is expected to ever recover and that no resident has been rehabilitated. The residents are thus destined to remain in the institutions until their death, with no prospect of community living. The institution that the Special Rapporteur visited is the rule rather than the exception. The management representatives of both residential institutions visited spoke of their interest in deinstitutionalizing their residents, but had concluded that it was not feasible due to obstacles such as opposition by local residents to including persons with disabilities in their communities and the lack of housing to accommodate such persons. It is also apparent that investments continue to be made to renovate and expand existing institutions, rather than build the infrastructures and services necessary to enable persons with disabilities to live independently."

B. Council of Europe

106. On 30 November 2016 the Council of Europe adopted its new Disability Strategy 2017-2023, whose overall goal is to achieve equality, dignity and equal opportunities for persons with disabilities. This strategy requires ensuring independence, freedom of choice, full and active participation in all areas of life and society (point 16). The strategy document is intended to guide and support the work and activities aimed at implementing the UNCPRD and carried out by the Council of Europe, its member States and other stakeholders both at national and local levels (point 17).

107. In its report published on 24 September 2015 following its June 2014 visit to Săpoca Psychiatric Hospital, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

(CPT) noted, in connection with overcrowding in the various units of the hospital:

> "124. ... Furthermore, the CPT considers that a structural response should be provided and polices developed to promote deinstitutionalisation and facilitate the introduction of a wide range of locally-based alternative modes of treatment (day hospitals, community houses, etc.). That would certainly help greatly reduce the constant pressure on the capacities of the Săpoca Psychiatric Hospital. In that connection, after the visit the Romanian authorities also pointed out that the local authorities had been contacted with a view to setting up socio-medical care centres and community services with a view to reducing overcrowding at the hospital and responding more appropriately to the needs of certain patients."

As regards safeguards provided to the persons concerned under security measures, the CPT stated:

> "151. ... Examination of the patients' personal files showed that they were in good order. The procedural deadlines had been respected, and a lawyer had been present at the court hearings. Both the hospitals and the patients were notified in writing of judicial decisions to retain institutionalisation. It transpired from conversations with patients that the latter were usually interviewed by the assessment board and informed of their continued placement in the institution. Patients could be assisted by their lawyers during such interviews. However, the patients' and lawyers' attendance was not mentioned in the b's minutes of proceedings. The CPT recommends that the Romanian authorities ensure in future that the minutes explicitly list the parties invited to attend and those actually present."

As regards reviews of detention measures, the CPT found as follows:

> "In practice, there is a report by the patient's doctor, a hearing by the assessment commission made up of the forensic specialist, one to three psychiatrist(s) from the hospital in question, the patient's psychiatrist – who plays no part in the decision-making – and a secretary."

108. In his report (CommDH(2014)14) published on 8 July 2014 in the wake of his visit to Romania from 31 March to 4 April 2014, the Council of Europe's Commissioner for Human Rights, Nils Muižnieks, mentioned his concern about the fact that despite all existing safeguards, persons with disabilities seldom benefited from a judicial review of their institutionalisation (§§ 14-25). He referred in that regard to the case-law of the Court, the conclusions of the CPT following its visits to Romania and those of the European Union Agency for Fundamental Rights ("FRA").

Moreover, he emphasised that the main obstacle preventing persons with disabilities from living in the community was the lack of alternatives to institutional care, which, in practice, made residential institutions a life-time arrangement for the majority of institutionalised persons (§§ 26-27).

THE LAW

...

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

111. The applicant complained of the unlawfulness of his detention and the arrangements for the periodic review of that measure, that he had not been informed of the reasons for his detention and that he had been unable to obtain compensation for his deprivation of liberty, which he considered contrary to the Convention. He relied on paragraphs 1, 2, 4 and 5 of Article 5 of the Convention, which provide:

> "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 for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> ...
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> ...
>
> 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.
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Alleged violation of Article 5 § 1 of the Convention

112. The applicant submitted that he had been deprived of his liberty in an arbitrary and unjustified manner. He first of all complained of the vagueness of the law in force at the time of his detention, arguing that it had conferred discretionary powers on the prosecutor which were not subject to judicial review and were accompanied by very few procedural safeguards for the detainee. He also argued that his detention had been ordered without a thorough examination of the criminal charges against him or a prior forensic medical examination, which was required in cases of non-urgent detention. He considered that the prosecutor and the court which had given the 22 April 2002 decision had been acting mala fide by supporting the theory, which he considered fallacious, that the forensic medical report of 11 November 2001 had proposed detaining him. Lastly, he submitted that the national authorities had, in the instant case, failed to explore the possibility of adopting alternative measures.

113. Secondly, the applicant pointed out that the periodic reviews of his detention had been a parody of justice and that, in any case, his detention was now unlawful in the light of the findings of the forensic medical reports

drawn up after his examinations in September and November 2015 (see paragraphs 58 and 61 above).

...

2. Merits

a) Parties' submissions

i. The applicant

127. The applicant submitted that his detention was arbitrary and unjustified, and was based solely on his mental disability, which he claimed was contrary to the requirements of the Court's case-law, to Article 14 § 1 (b) CRPD (see paragraphs 101-102 above), and to the recent case-law of the Committee on the Rights of Persons with Disabilities (see paragraph 103 above). He further submitted that during his detention the authorities had never considered the possibility of adopting less restrictive measures in his case.

128. First of all, the applicant emphasised that the danger which he was liable to pose to society within the meaning of Article 114 of the old CP or Article 110 of the new CP had at no stage been thoroughly investigated. He argued that the forensic medical reports drawn up had perpetuated and consolidated the flaws in the initial detention order, which had referred to all the charges against him, whereas only one of those charges had been levelled by the prosecution at the end of the investigation, that is to say that relating to sexual corruption. He took the view that the constant references in those forensic medical reports to the offence of incest which he had allegedly committed had had a powerful stigmatising effect capable of influencing the doctors' and judges' perception of his potential dangerousness. Furthermore, the sexual corruption charge had never been the subject of a judicial review because of the closure of the criminal investigation instigated against him for lack of evidence and the suspect's lack of discernment. In support of his allegations the applicant cited, in particular, the argument put forward by Buzău County Court in its 29 August 2016 judgment concerning the antisocial acts he was alleged to have committed against members of his family (see paragraph 64 above). The applicant took the view that not only did the aforementioned argument breach the principle of presumption of innocence, but it also nullified the effect of the two forensic medical reports drawn up during the proceedings which concluded with the aforementioned judgment, one of which reports had proposed releasing him and the other had stated that the continuation of his detention no longer had any basis in law.

129. Moreover, the applicant explained that the forensic medical reports, which were more or less identical, had failed to focus on devising and implementing a plan of treatment aimed at ensuring his reintegration in

society once an improvement in his state of health had been noted, such as to put an end to the danger he had posed within the meaning of the CP. The applicant took the view that the lack of such a therapeutic plan merely reinforced the punitive aspect of the measure and eliminated the necessary preventive and medical aspects of psychiatric detention. That being the case, the applicant's detention was geared more to giving vent to public indignation about the offences with which he had been charged than to preventing a real and imminent risk arising from his release, in breach of Article 5 § 1 (e) of the Convention.

130. The applicant further considered that the forensic medical experts and the courts had misinterpreted the forensic medical report of 2 November 2001 as proposing medical detention (under Article 114 CP), whereas it had in fact only recommended specialist medical treatment (under Article 113 CP).

131. Secondly, the applicant contested the reasons given by the forensic medical experts for preventing his reintegration into society: the fear that he would commit acts of domestic violence, his lack of social support and his denial of his illness and of his guilt for the offences charged.

132. He considered that the fear that he might commit acts of domestic violence was insufficient to justify his detention, particularly since the Romanian State had enacted special legislation to solve that problem, including specific measures other than psychiatric detention. According to the applicant, such a fear was especially unjustified as the authorities had ignored his argument that he had been the victim of scheming on the part of his former wife.

133. Nor was the alleged lack of a social support network to help promote his reintegration into society a decisive reason for refusing to lift the order. His continuous detention for many years had had the logical consequence of loss of contact with relatives and friends. The applicant considered that at all events, the authorities could not be unaware that he owned an apartment in Bucharest and was being helped by his friend, N.T.

134. The applicant also criticised the forensic medical reports for having drawn conclusions from the fact that he did not acknowledge that he was ill and denied having committed the acts with which he had been charged following the criminal investigation, in particular the offence of incest. He emphasised that the same reports mentioned his calm, non-violent attitude throughout his period of detention.

135. Thirdly, the applicant submitted that the forensic medical reports drawn up in autumn 2015 (see paragraphs 58 and 61 above) and the similar report drawn up in January 2017 (see paragraph 70 above) had confirmed that he was not suffering from a disorder of a nature or degree warranting detention within the meaning of Article 5 § 1 (e) of the Convention. He added that those reports had emphasised that there had been no change in

his illness, which finding cast doubt on the conclusions of the previous reports.

136. In that context, he submitted that the order set out in the recitals of the 29 August 2016 judgment to the effect that the social welfare services should make the requisite preparations for his release ought to have been accompanied by details of the urgent nature, the scope and the timetable for execution of such release, and the obligation to report on the outcome. Furthermore, the operative provisions of the judgment did not mention any obligation to seek alternatives to detention. The applicant considered that after that judgment had been adopted, the national authorities had only made very half-hearted preparations for his release, and that their main strategy had been to attempt to return him to his family home, despite the family's evident reluctance to accommodate him.

137. Finally, the applicant also emphasised that even after the adoption of the 21 February 2017 judgment, all the domestic authorities' attempts to prepare for his release had failed, probably deferring his release indefinitely. He considered that in view of his vulnerable person status, it was incumbent on the authorities to seek appropriate solutions enabling him to live in the community, particularly since he had been unlawfully deprived of his liberty for over sixteen years. Lastly, he submitted that his situation clearly illustrated the total absence of resources and procedures in Romania to facilitate individuals' transition from institutionalised to community life, despite the high level of long-term institutionalisation in the country (see paragraphs 105 and 108 above).

ii. The Government

138. First of all, referring to the case-law of the Court, the Government submitted that in deciding whether an individual should be detained as a "person of unsound mind", the national authorities should be recognised as having a certain margin of appreciation since it was in the first place for the national authorities to evaluate the evidence adduced before them in a particular case (see *Luberti v. Italy*, 23 February 1984, § 27, Series A no. 75).

139. They went on to point out that in the present case the applicant's detention had been based on forensic medical reports certifying the illness from which he suffered. The Government considered that those expert reports, which mentioned the impact of his illness on his social life, health and material or other interests, had enabled the judicial authorities to conclude that the applicant represented a danger to his family, which ruled out returning him to the family home. Furthermore, they stated that the domestic courts had assessed whether alternative measures could be imposed on the applicant, but that they had concluded that in the particular circumstances of the case, more lenient measures would have been

insufficient to protect either the public interest or the personal interests of the applicant.

140. Finally, the Government mentioned that following the adoption of the final judgments of 29 August 2016 and 21 February 2017, the national authorities had been seeking appropriate solutions to the applicant's situation.

b) The Court's assessment

i. General principles

141. The Court reiterates that Article 5 enshrines a fundamental right, namely the protection of the individual against any arbitrary interference by the State with his or her right to liberty. Sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty and no deprivation of liberty will be lawful unless it falls within one of those grounds. Moreover, only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his or her liberty (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, § 170, ECHR 2000-IV, and *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 88, ECHR 2016).

142. The Court further reiterates that in order to comply with Article 5 § 1 of the Convention, the detention in issue must first of all be "lawful", including the observance of a procedure prescribed by law; in this respect the Convention refers back essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. It requires in addition, however, that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness (see *Herczegfalvy v. Austria*, 24 September 1992, § 63, Series A no. 244).

143. Furthermore, the detention of an individual is such a serious measure that it is only justified where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained. That means that it does not suffice that the deprivation of liberty is executed in conformity with national law but it must also be necessary in the circumstances (see *Witold Litwa v. Poland*, no. 26629/95, § 78, ECHR 2000-III).

144. As regards the detention of persons suffering from mental disorders, an individual cannot be considered to be of "unsound mind" and deprived of his liberty unless the following three minimum conditions are satisfied: firstly, he must reliably be shown to be of unsound mind; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement; thirdly, the validity of continued confinement

depends upon the persistence of such a disorder (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33; *Varbanov v. Bulgaria*, no. 31365/96, § 45, ECHR 2000-X; and *Shtukaturov v. Russia*, no. 44009/05, § 114, ECHR 2008).

145. As regards the second condition mentioned above, the detention of a mentally disordered person may be necessary not only where he needs therapy, medication or other clinical treatment to cure or alleviate his condition, but also where the person needs control and supervision to prevent him, for example, causing harm to himself or other persons (see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 52, ECHR 2003-IV, and *Stanev v. Bulgaria* [GC], no. 36760/06, § 146, ECHR 2012).

146. The Court also reiterates that in certain circumstances, the welfare of a person with mental disorders might be a further factor to take into account, in addition to medical evidence, in assessing whether it is necessary to place the person in an institution. However, the objective need for accommodation and social assistance must not automatically lead to the imposition of measures involving deprivation of liberty. The Court considers that any protective measure should reflect as far as possible the wishes of persons capable of expressing their will. Failure to seek their opinion could give rise to situations of abuse and hamper the exercise of the rights of vulnerable persons. Therefore, any measure taken without prior consultation of the interested person will as a rule require careful scrutiny (see *Stanev*, cited above, § 153).

147. Finally, the Court has consistently held that it takes into account relevant international instruments and reports in order to interpret the guarantees of the Convention and to establish whether there is a common standard in the field. It is for the Court to decide which international instruments and reports it considers relevant and how much weight to attribute to them (see *Tănase v. Moldova* [GC], no. 7/08, § 176, ECHR 2010, and *A.-M.V. v. Finland*, no. 53251/13, § 74, 23 March 2017). In the present case, the Court considers relevant the provisions of the United Nations Convention on the Rights of Persons with Disabilities (see paragraph 101 above) as interpreted by the Committee on the Rights of Persons with Disabilities (see paragraphs 102-103 above), and the other relevant international instruments cited in paragraphs 100 and 106-108 above.

ii. Application of those principles to the present case

148. In order to assess whether the maintenance of the applicant's psychiatric detention was lawful under Article 5 § 1 of the Convention, the Court must verify whether that measure was in conformity with domestic law, whether it fell within the scope of any of the exceptions to individual liberty laid down in sub-paragraphs (a) to (f) of that provision and, lastly, whether it was justified under any of those exceptions.

149. The Court notes from the outset that it has not been disputed that the applicant is the subject of detention which falls within the scope of Article 5 § 1 (e) of the Convention, the applicant having suffered from mental disorders confirmed by a whole series of forensic medical reports. Accordingly, the first condition required under the Court's case-law for the detention of a "person of unsound mind" (see paragraph 144 above) was satisfied. It remains to be seen whether the applicant's illness was of a kind or degree warranting detention and whether, in the particular circumstances of the case relating to the findings of the latest forensic medical reports, the applicant's detention had been extended validly.

α) Whether the applicant's disorder justified maintaining his detention after 2007

150. The Court notes that the first review of the lawfulness of the applicant's continued detention, which was carried out on 11 September 2007, occurred after the legislative amendments designed to consolidate the rights of persons with disabilities. It was the first review after the confirmation of the detention renewal by a court on 22 April 2002. Under those conditions, an extremely thorough and complete examination ought to have been conducted in order to ascertain whether the applicant's psychiatric disorder was of a kind and degree warranting detention. In fact, analysis of the review conducted shows that that was not what happened.

151. The Court observes that in order to warrant detention, domestic legislation requires the mental illness to render the person concerned dangerous to society (see paragraphs 83-84 above). It also reiterates that although Article 5 § 1 (e) authorises the confinement of a mentally disordered person even in the absence of plans to provide him with medical treatment (see *Hutchison Reid*, cited above, § 52), such a measure must nevertheless be duly justified by the seriousness of the person's state of health so as to ensure his own protection or the protection of others.

152. As regards the first review of the detention measure, the Court notes that Buzău District Court justified its decision with a simple reference to two main factors. First of all it referred to the initial criminal charges against the applicant, that is to say incest and sexual corruption. Secondly, it referred to the findings of the forensic medical report produced in July 2007, which centred on the fact that the applicant was suffering from paranoid schizophrenia (see paragraph 36 above).

153. As regards the charges against the applicant, it transpires from a reading of the 11 September 2007 decision that the court based the latter exclusively on the contents of the criminal file created by the prosecution. However, it must be noted that the prosecutor had dismissed the incest charge for lack of evidence, and had only maintained the charge of sexual corruption. He had subsequently decided to drop proceedings in respect of the latter charge owing to the applicant's lack of discernment. No judicial

review was ever conducted of the latter decision. Supposing that the reference to those charges might correspond to the court's considerations concerning the dangerousness required under Article 114 CP, the Court notes that no domestic court ever conducted an examination of the charges in the presence of both parties. Therefore, that the Court considers that reference insufficient to establish the level of danger posed by the applicant.

154. For the remainder, it would appear that the court referred purely and simply to the findings of the forensic medical report, which proposed maintaining the detention, which approach the Court has criticised in several cases (see *Plesó v. Hungary*, no. 41242/08, § 64, 2 October 2012 – a case concerning lawfulness of detention – and *Ivinović v. Croatia*, no. 13006/13, § 40, 18 September 2014 – concerning a declaration of legal incapacity).

155. The Court considers that that approach led the court to fail to conduct a thorough assessment of the aspect which was essential in deciding on the applicant's detention, that is to say his dangerousness. The court did not establish whether the applicant was dangerous to himself or others, owing in particular to his psychiatric pathology (see, *mutatis mutandis*, *Gajcsi v. Hungary*, no. 34503/03, § 21, 3 October 2006). Furthermore, neither the court nor the medical authorities reported any acts of violence committed by the applicant during his detention (see, *mutatis mutandis*, *Stanev*, cited above, § 157). Quite the contrary: the medical examination carried out in July 2007 found that the applicant behaved in a calm manner, that he accepted his treatment, that he caused no trouble with or among his fellow patients and that he had shown very little hostility during the treatment (see paragraph 33 above).

156. The Court then observes that the subsequent reviews failed to shed light on the potential danger posed by the applicant, Buzău District Court having adopted the same formalistic and superficial approach in examining him. Nor did the two appeals lodged by the applicant with Buzău County Court against the decisions of the former court or the separate actions brought by the applicant himself provide any kind of clarification.

157. Moreover, neither the medical authorities nor the court itself considered whether any alternative measures might have been implemented in the present case (see, *mutatis mutandis*, *Mihailovs v. Latvia*, no. 35939/10, § 149 *in fine*, 22 January 2013, and *Atudorei v. Romania*, no. 50131/08, § 153, 16 September 2014).

158. In the light of the foregoing considerations, the Court concludes that the applicant's detention is contrary to domestic law, because under Article 114 of the old CP and Article 110 of the new CP a detention measure can only be imposed on a person if he poses a danger to society.

159. Furthermore, the Court considers that such detention is open to question, particularly in the light of the provisions of Article 14 § 1 (b)

CRPD, which lays down that the existence of a disability shall in no case justify a deprivation of liberty (see paragraph 101 above).

160. In any event, the Court observes with interest that the question of the danger posed by the applicant was recently examined by the national authorities. It transpires from the latest forensic medical reports that the applicant's situation cannot be characterised by any presumption of a danger to society (see paragraphs 58, 61 and 70 above). The Court observes that the authorities nevertheless omitted to indicate the factual evidence on which this reassessment of the danger posed by the applicant was based.

161. Under those conditions, it would appear that at least since 2007, when the first periodic review was carried out, the applicant's detention has been devoid of any basis in law and has not been warranted by Article 5 § 1 (e) of the Convention.

β) The necessity of extending the applicant's detention after 29 August 2016

162. The Court observes that the findings of the latest forensic medical reports presented the medical officers with a psychiatric and deontological dilemma as regards the applicant's possible release, given that the provisions of domestic law concerning detention measures required the detainee to pose a danger to society, which did not apply to the applicant. Initially, in August 2016, Buzău County Court showed a degree of caution and stated that in principle the applicant's detention in a psychiatric hospital should be terminated, but he nonetheless continued to be confined to such hospitals on a temporary basis pending his transfer to a specialised institution appropriate to his needs (see paragraph 64 above). Six months later, in February 2017, Buzău District Court ordered the applicant's release (paragraph 72 above).

163. The Court reiterates that it has previously recommended examining the compatibility of the circumstances of the release of detained persons with Article 5 § 1 (e) of the Convention. For instance, in the cases of *Luberti v. Italy* (23 February 1984, Series A no. 75) and *Johnson v. the United Kingdom* (24 October 1997, *Reports of Judgments and Decisions* 1997-VII), the applicants had to be released since they were no longer suffering from mental disorders requiring confinement. In *Kolanis v. the United Kingdom* (no. 517/02, ECHR 2005-V), the applicant's release was only considered appropriate if the treatment continued or monitoring was put in place, as a prerequisite for protecting her health and the safety of others. The Court concluded that while it was not excluded that the imposition of conditions could justify a deferral of a discharge found to be appropriate or feasible in domestic-law terms, it was of paramount importance that appropriate safeguards were in place so as to ensure that any continued detention was consonant with the purpose of Article 5 § 1 of the Convention.

In the *Johnson* judgment (cited above), the Court stated the following:

> "63. In the view of the Court it must also be acknowledged that a responsible authority is entitled to exercise a similar measure of discretion in deciding whether in the light of all the relevant circumstances and the interests at stake it would in fact be appropriate to order the immediate and absolute discharge of a person who is no longer suffering from the mental disorder which led to his confinement. That authority should be able to retain some measure of supervision over the progress of the person once he is released into the community and to that end make his discharge subject to conditions. It cannot be excluded either that the imposition of a particular condition may in certain circumstances justify a deferral of discharge from detention, having regard to the nature of the condition and to the reasons for imposing it. It is, however, of paramount importance that appropriate safeguards are in place so as to ensure that any deferral of discharge is consonant with the purpose of Article 5 § 1 and with the aim of the restriction in sub-paragraph (e) (see paragraph 60 above) and, in particular, that discharge is not unreasonably delayed."

In *Kolanis* (cited above), the Court stated the following:

> "71. As events in the present case showed, the treatment considered necessary for such conditional discharge may not prove available, in which circumstances there can be no question of interpreting Article 5 § 1 (e) as requiring the applicant's discharge without the conditions necessary for protecting her and the public, or as imposing an absolute obligation on the authorities to ensure that the conditions are fulfilled. Nor is it necessary in the present case to attempt to anticipate what level of obligation could arise by way of provision of treatment in the community to ensure the due effectiveness of MHRT [Mental Health Review Tribunal] decisions concerning release. In the situation under consideration, a failure by the local authority to use its "best efforts" or any breach of duty by a psychiatrist in refusing care in the community would be amenable to judicial review. The Court is therefore not persuaded that local authorities or doctors could wilfully or arbitrarily block the discharge of patients into the community without proper grounds or excuse, or that this occurred in this case."

In the absence of adequate guarantees to protect applicants, and particularly in the absence of a judicial review to ensure that their release is not unreasonably delayed, the Court has found a violation either of Article 5 § 1 (e) of the Convention, as in *Johnson* (cited above), or of Article 5 § 4, as in *Kolanis* (cited above).

164. In the present case the Court notes from the outset that in its final judgment of 29 August 2016, Buzău County Court, despite having emphasised the need to put an end to the applicant's detention, did not indicate any legal basis for ordering his continued confinement in psychiatric hospital (cf. *Johnson*, § 59, and *Stanev*, §§ 149-150, judgments cited above). Moreover, after the adoption of the final judgment on 21 February 2017 ordering the applicant's release, neither the national authorities nor the Government referred to the procedure applicable to the applicant's situation, first of all evaluating his needs and then releasing him or transferring him to another centre appropriate to his needs as so identified. Nor was the possibility of gradual or conditional release mentioned.

165. The Court considers that even though the applicant agreed to remain confined until the welfare services found a solution appropriate to his situation (see paragraph 73 above), which agreement was shored up by the concurring letter written by his legal representative (see paragraph 74 above), he ought to be granted adequate safeguards for his protection, which should, in particular, lead to his release without unjustified delay.

166. In the light of the factual circumstances of the present case, the Court considers that the enforcement of the aforementioned decisions raises additional issues under Article 5 § 1 of the Convention. Even though those decisions were based on practices which have become quite common at the international level in recent years, geared to promoting, as far as possible, treatment and care for persons with disabilities in the community (see Article 19 CRPD cited in paragraph 101 above, the Guidelines of the Committee on the Rights of Persons with Disabilities cited in paragraph 102 above, the Council of Europe's Disability Strategy 2017-2023 cited in paragraph 106 above and, *mutatis mutandis*, *W.D. v. Belgium*, no. 73548/13, § 113, 6 September 2016), the fact is that the applicant has never actually been released.

167. In any event, according to the information available to the Court, it would appear that no thorough assessment has been carried out to date of the applicant's practical needs and the appropriate social protection measures. Furthermore, the action taken by the national authorities has been unproductive because of the lack of reception facilities. That situation reflects realties in Romania which have already been described by the international organisations (see paragraphs 104-105 and 107 above). Those factors are sufficient for the Court to conclude that the applicant's continued detention after the adoption by Buzău County Court of the 29 August 2016 judgment was arbitrary under Article 5 § 1 (e) of the Convention.

γ) Conclusion

168. In the light of the foregoing considerations, the Court finds that in the present case there was a violation of Article 5 § 1 (e) of the Convention as regards the applicant's continued detention after 2007 and after 29 August 2016.

...

C. Alleged violation of Article 5 § 4 of the convention

174. The applicant complained of his inability to contest the provisional detention order issued by the prosecution on 30 January 2001, the lack of a judicial review of the need to continue the detention order after it had been upheld by decision of Bucharest District Court 6 on 22 April 2002, until 11

September 2007, as well as the unlawful, formalistic and/or superficial nature of the reviews conducted after that latter date. He relied in this regard on Article 5 § 4 of the Convention.

...

2. Merits

a) The parties' submissions

i. The applicant

178. First of all, the applicant alleged that the periodic reviews carried out by the authorities after 2007 had been superficial and seriously flawed and had not complied with the requirements of promptness. He pointed out in particular that between 2010 and the end of 2013 no judicial review had been carried out, even though the legal requirement had been that a review had to be conducted every six months (see paragraph 90 above). According to the applicant, it had not been until the present application had been communicated to the Government at the end of 2013 that Buzău District Court had examined the backlog of forensic medical reports covering the period 2010-2012 forwarded en bloc by the medical authorities, at four hearings held on 17 and 19 December 2013. Similarly, on 4 February 2013 the court had examined another three forensic medical reports covering the period 2012-2013. Finally, he alleged that some eighteen months had passed between the judicial review carried out in February 2015 and the following review, implemented by means of the final judgment of 29 August 2016.

179. Secondly, the applicant submitted that the legal aid with which he had been provided by the officially appointed lawyers had not been effective. He also complained of those lawyers' passivity and their failure to advise him during the proceedings and to interview him prior to the hearings. The lawyers had either left the matter of extending the detention measure to the courts' discretion or opposed the lifting of the measure. They had neither demanded the administration of fresh evidence nor made any effort to appeal against the first-instance decisions.

180. Thirdly, the applicant considered that the Government had not demonstrated that Săpoca Psychiatric Hospital had put in place a mechanism for notifying legal documents on the situation of detained persons such as to ensure compliance with their procedural rights.

181. Lastly, under the same Article, the applicant alleged that the domestic courts had failed properly to assess the latest forensic medical reports, bearing in mind, in particular, that domestic law did not authorise detaining a non-dangerous person in a psychiatric hospital.

ii. The Government

182. The Government stated first of all that after 2007 several automatic judicial reviews had been conducted in accordance with the provisions of domestic law, and that the decision-making process had been fair in each case. They specified that the judicial authorities, which had interviewed the applicant on each occasion, had given reasoned decisions based on the forensic medical reports and that during those proceedings, which had been conducted on an *inter partes* basis and had been devoid of arbitrariness, the courts had considered whether alternative measures could be envisaged, after having balanced the public interest and the applicant's personal interest. Lastly, the applicant had indeed been assisted by an officially appointed lawyer during each set of proceedings.

183. Furthermore, the Government argued that the applicant had been able to file separate actions seeking the lifting of the measure, and that those actions had been assessed by the competent courts (see paragraphs 44 and 47 above).

b) The Court's assessment

i. General principles

184. The Court reiterates that Article 5 § 4 entitles detained persons to institute proceedings for a review of compliance with the procedural and substantive conditions which are essential for the "lawfulness", in Convention terms, of their deprivation of liberty. The notion of "lawfulness" in paragraph 4 of Article 5 has the same meaning as in paragraph 1, such that a detained person is entitled to a review of the "lawfulness" of his detention in the light not only of the requirements of domestic law but also of the Convention, the general principles embodied therein and the aim of the restrictions permitted by Article 5 § 1. Article 5 § 4 does not guarantee a right to judicial review of such a scope as to empower the court, on all aspects of the case including questions of pure expediency, to substitute its own discretion for that of the decision-making authority. The review should, however, be wide enough to bear on those conditions which are essential for the "lawful" detention of a person according to Article 5 § 1 (see *E. v. Norway*, 29 August 1990, § 50, Series A no. 181-A). The reviewing "court" must not have merely advisory functions but must have the competence to "decide" the "lawfulness" of the detention and to order release if the detention is unlawful (see *Stanev*, § 168, and *Khlaifia and Others*, § 128, judgments cited above).

185. The forms of judicial review meeting the requirements of Article 5 § 4 may vary from one domain to another, and depend on the type of deprivation of liberty in issue. It is not within the province of the Court to inquire into what would be the best or most appropriate system of judicial review in the particular sphere under examination (see *Shtukaturov*, cited above, § 123).

186. Nevertheless, the domestic remedy available under Article 5 § 4 should enable review of the conditions which, according to Article 5 § 1 (e), are essential for the "lawful detention" of a person on the ground of unsoundness of mind (see *Ashingdane v. the United Kingdom*, 28 May 1985, § 52, Series A no. 93). The Convention requirement that an act of deprivation of liberty be amenable to independent judicial scrutiny is of fundamental importance in the context of the underlying purpose of Article 5 of the Convention to provide safeguards against arbitrariness. What is at stake is both the protection of the physical liberty of individuals and their personal security (see *Varbanov*, cited above, § 58). In the case of detention on the ground of mental illness, special procedural safeguards may be called for in order to protect the interests of persons who, on account of their mental disabilities, are not fully capable of acting for themselves (see, among other authorities, *Winterwerp*, § 60, and *Stanev*, § 170, judgments cited above).

187. Among the principles emerging from the Court's case-law under Article 5 § 4 concerning "persons of unsound mind" are the following:

(a) a person detained for an indefinite or lengthy period is in principle entitled, at any rate where there is no automatic periodic review of a judicial character, to take proceedings "at reasonable intervals" before a court to put in issue the "lawfulness" – within the meaning of the Convention – of his detention;

(b) Article 5 § 4 requires the procedure followed to have a judicial character and to afford the individual concerned guarantees appropriate to the kind of deprivation of liberty in question; in order to determine whether proceedings provide adequate guarantees, regard must be had to the particular nature of the circumstances in which they take place;

(c) the judicial proceedings referred to in Article 5 § 4 need not always be attended by the same guarantees as those required under Article 6 § 1 for civil or criminal litigation. Nonetheless, 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 *Megyeri v. Germany*, 12 May 1992, § 22, Series A no. 237-A, and *Stanev*, cited above, § 171).

ii. Application of those principles to the present case

188. The Court first of all observes that the procedure which was put in place by the relevant Romanian legislation and came into force in September 2006 (see paragraphs 90 and 91 above) amounts to an automatic periodic judicial review of the grounds of detention similar to the procedure at issue in other cases previously examined by the Court (see *Herczegfalvy*, cited above, §§ 74-78, and *Magalhães Pereira v. Portugal*, no. 44872/98, §§ 40-51, ECHR 2002-I). Furthermore, the detainee is entitled at any time to

apply for the lifting of the measure and for his release (see paragraphs 44, 47 and 89-90 above).

189. The Court must now consider whether the two procedures available under the national system fulfil the requirements of Article 5 § 4 of the Convention. In the light of the principles emerging from its case-law (see paragraphs 184-187 above) and having regard to the applicant's arguments, the Court will consider in particular the periodicity of the reviews of the detention measure and the adequacy of the legal assistance provided to the applicant.

α) Periodicity of the reviews

190. The Court reiterates that in its judgment *Herczegfalvy* (cited above, § 75) it held that the second condition of Article 5 § 4 implied not only that the competent courts should decide "speedily", but also that their decisions should follow at reasonable intervals. In that case, as well as in *Magalhães Pereira* (cited above, § 48), reviews conducted after periods of fifteen months, two years and over two-and-a-half years led the Court to find a violation of that provision.

191. In the present case, the Court notes that the judicial reviews of the need to continue the applicant's detention had been conducted in September 2007, October 2008, February and April 2010, December 2013, February 2014, February 2015 and May 2016. It observes that the court took long period of time, that is to say fifteen months (February 2015 – May 2016), sixteen months (October 2008 – February 2010), and even three years and eight months (April 2010 - December 2013), to assess whether or not the detention should be extended. The Government have failed to show that there were in this case such exceptional grounds as could justify the periods in question (see *Musiał v. Poland* [GC], no. 24557/94, § 48, ECHR 1999-II).

192. Moreover, the Court notes with concern the practice of verifying the need to maintain the detention measure retrospectively, on the basis of medical information obtained a long time in advance (for example more than one, two or three year[s] previously), which therefore did not necessarily reflect the condition of the detained person at the time of the decision. It considers that a delay of that length between the forensic medical examination and the corresponding decision might, in itself, be capable of running counter to the principle underlying Article 5 of the Convention, namely the protection of individuals against arbitrariness as regards any measure depriving them of their liberty (see *Musiał*, cited above, § 50, and *Magalhães Pereira*, cited above, § 49).

193. Furthermore, the Court emphasises that in so proceeding the Court of First Instance also failed to comply with the procedural rules of the domestic legislation on the mandatory periodic review of the grounds for detention; the six-month time-limit or, as of 1 February 2014, the twelve-

month time-limit, provided for in the Code of Criminal Procedure, which is unequivocal in this regard, was not complied with (see paragraphs 90 and 91 above) (see *Magalhães Pereira*, cited above, § 50).

194. Finally, insofar as the aforementioned delays are explicable by the need to obtain the requisite forensic medical reports, the Court observes that it does not transpire from the content of the case file that the court ever enquired about the progress of the work of the medical experts (cf. *Kuttner v. Austria*, no. 7997/08, § 42, 16 July 2015). Furthermore, it cannot be overlooked that pursuant to the applicable Romanian legislation, the court could have imposed fines on experts who failed in their obligation to submit a report, but that the court had taken no such action in the instant case (see paragraph 93 above).

195. Having regard to the foregoing consideration, the Court considers that the intervals at which the courts decided on the necessity of maintaining the applicant's detention did not meet the "speediness" requirement set out in Article 5 § 4 of the Convention.

β) Legal assistance

196. The Court reiterates that where a person is confined in a psychiatric institution on the ground of the commission of acts which constituted criminal offences but for which he could not be held responsible on account of mental illness, he should - unless there are special circumstances - receive legal assistance in subsequent proceedings relating to the continuation, suspension or termination of his detention. The importance of what is at stake for him - personal liberty - taken together with the very nature of his affliction - diminished mental capacity - compel this conclusion (see *Megyeri*, cited above, § 23). It is not disputed that the applicant suffered from a mental disability which prevented him from conducting court proceedings and that during the periodic review of his detention he benefited from the assistance of an officially assigned lawyer. However, as the Court has emphasised on many occasions, assigning counsel does not in itself ensure the effectiveness of the assistance he may afford an accused (see *Magalhães Pereira*, cited above, § 60), because an 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)*, no. 75450/12, § 154, 19 February 2015).

197. In the present case, the Court notes that in the great majority of cases, the officially appointed lawyers either advocated the maintenance of the detention or left it to the discretion of the courts. Far from dictating how a lawyer should approach cases in which he or she represents a person suffering from mental disorders, the Court considers that there was a lack of effective assistance throughout the procedures for reviewing the necessity of the applicant's detention. In support of that finding the Court observes that

the applicant was represented by a different lawyer for each procedure. Moreover, it takes into account the applicant's argument, which the Government has not contradicted, concerning the lack of interviews with his various lawyers before the court hearings, which suggests a complete absence of consultation between the applicant and his legal representatives (see, *mutatis mutandis*, *Sýkora v. the Czech Republic*, no. 23419/07, § 108, 22 November 2012 and the references therein, and *M.S. v. Croatia (no. 2)*, cited above, § 155).

198. Having regard to the foregoing considerations, the Court concludes that during the procedures implemented with a view to the periodic judicial review of the necessity of his detention the applicant did not benefit from adequate legal assistance.

γ) Conclusion

199. Those factors are sufficient for the Court to conclude that the procedures conducted with a view to the judicial review of the applicant's continued detention failed to provide sufficient safeguards for the purposes of Article 5 § 4 of the Convention. There was therefore a violation of that provision.

...

IV. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

A. Article 46 of the Convention

213. Article 46 of the Convention provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

214. The applicant requested that the Court order the respondent State to release him and to ensure, at all costs, that he is prepared, in view of the length of his detention, for his transition from life in an institution to life in the community, by providing him with the necessary support in exercising his legal capacity, seeking proper housing and obtaining psychological assistance, in accordance with international good practice. He referred in that regard to European Guidelines on Transition from Institutional to Community-Based Care, published in November 2012 by the European Expert Group on Transition from Institutional to Community-Based Care.

215. The Court reiterates that under Article 46 of the Convention the Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the

Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII, and *Stanev*, cited above, § 254). The Court also reiterates that it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order in order to discharge its obligation under Article 46 of the Convention (see *Scozzari and Giunta*, cited above, and *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I).

216. However, with a view to helping the respondent State to fulfil its obligations under Article 46, the Court may seek to indicate the type of individual and/or general measures that might be taken in order to put an end to the situation it has found to exist (see, among many other authorities, *Stanev*, cited above, § 255).

217. In the present case, the Court considers that it is necessary, in the light of its finding of a violation of Article 5, to indicate individual measures for the execution of the present judgment. It reiterates that it has found a violation of that provision on the grounds of non-compliance with the criterion that any detention must be ordered "in accordance with a procedure prescribed by law" and the lack of justification of the detention under Article 5 § 1 (e). The Court has also noted shortcomings in the verification of the persistence of the disorders justifying the detention.

218. The Court considers that in order to efface the effects of the breach of the applicant's rights the authorities should immediately implement the final judgment of Buzău County Court of 21 February 2017 ordering the applicant's release under conditions consonant with his needs.

219. Furthermore, the Court is of the view that the shortcomings identified in the present case are liable to give rise to further justified applications in the future. Accordingly, it recommends that the respondent State should envisage adopting the requisite general measures to ensure that the detention of individuals in psychiatric hospitals is lawful, justified and devoid of arbitrariness. Similarly, detainees should have access to a judicial appeal accompanied by appropriate safeguards ensuring a prompt decision on the lawfulness of the detention.

...

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

...

Done in French, and notified in writing on 28 November 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Registrar	Ganna Yudkivska President