

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

FOURTH SECTION

CASE OF RESTANȚIA v. ROMANIA

(Application no. 10875/19)

JUDGMENT

This judgment was revised in accordance with Rule 80 of the Rules of Court in a judgment of 24 October 2023.

STRASBOURG

31 January 2023

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Restanția v. Romania,

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

Faris Vehabović*, President*,
Iulia Antoanella Motoc,
Branko Lubarda*, judges*,

and Crina Kaufman, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 10875/19) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 14 February 2019 by a Romanian national, Mr Ilie Restanția, born in 1942 and living in Ștei ("the applicant") who was represented by Mr A. Said, a lawyer practising in Oradea;

the decision to give notice of the application to the Romanian Government ("the Government"), represented by their Agent, Ms O.F. Ezer, of the Ministry of Foreign Affairs;

the parties' observations;

Having deliberated in private on 10 January 2023,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant's extended medical detention in a psychiatric hospital (since 2011) and the consequences this measure had for the conduct of civil proceedings concerning the property title to his family house.

I. BACKGROUND OF THE CASE

2. In 1964 the applicant's father, I., sold his property (house, yard and garden, hereinafter "the house") to L., whom he married two months later (hereinafter "the 1964 sale"). In 1999 L. transferred the title to the house to her granddaughter. I. died in 1973 and L. in 2009.

3. The applicant was treated for various psychiatric issued as from 1966, at Sibiu psychiatric hospital ("the SPH").

II. PROCEEDINGS CONCERNING THE 1964 SALE

4. On 15 January 2010 the applicant brought a court action against E.H., L.'s daughter-in-law who was living on the property in question at that time. He sought annulment of the 1964 sale contract, arguing that it had been concluded with the sole purpose of depriving him of his inheritance. He explained that after I.'s death, he had been thrown out of the family house by

L. and her children. Since then he had been homeless, and had been unable to retrieve from the house his identity papers or personal belongings. E.H. claimed that the applicant had moved out of the house in 1946 with his mother, when his parents had divorced.

5. On 9 June 2010 V.S. expressed her wish to become the applicant's temporary guardian (*curator*) and was admitted to the proceedings. She explained that, with the applicant's agreement, she had been appointed by Sibiu social welfare authority as his temporary guardian in a different set of proceedings concerning an action for recovery of possession of the house (*acţiune în revendicare*), which, on 20 May 2010, was stayed by the District Court pending the outcome of the action concerning the validity of the 1964 sale. There is no indication in the file that any of the parties requested that the proceedings for recovery of possession be reopened after the adoption of decision of 24 April 2014 (see paragraph 9 below).

In the proceedings for the recovery of possession, before V.S.'s intervention, the social welfare authority had denied the court's requests to appoint a temporary guardian for the applicant, on the grounds that he did not have a known address or valid identity papers.

6. On 19 April 2011 the Sibiu District Court dismissed the action as being brought against a person without legal standing in the case. It found that E.H. was not L.'s heir and did not own the house.

7. On 10 May 2011 the applicant, to whom the decision was handed in person, lodged an appeal before the Sibiu County Court. He also complained that V.S. had acted against his interests.

8. The applicant was informed by the court about the dates of the hearings scheduled in the case, but failed to appeal. The notifications were served on him by posting them on the door of the house. V.S. also received at least one notification but did not appear.

9. On 7 November 2011 the County Court stayed the proceedings for lack of participation of the parties and on 24 April 2014 it terminated the proceedings for that reason (*perimarea acţiunii*).

10. The applicant received a copy of the final decision on 11 October 2018.

III. MEDICAL DETENTION

11. On 23 November 2010, the judge who had sat in the proceedings concerning the 1964 sale (see paragraph 4 above) lodged with the prosecutor's office attached to the Sibiu District Court ("the prosecutor") a criminal complaint against the applicant, accusing him of inappropriate behaviour towards her.

12. At the prosecutor's request, on 8 June 2011 a commission of the Sibiu Service for Forensic Medicine examined the applicant and found that he was slightly mentally retarded and suffered from persistent delirium issues.

13. Upon the commission's recommendation, on 11 July 2011 the applicant was admitted to the SPH where, on 27 July 2011, he underwent a new psychiatric evaluation. The SPH evaluation commission confirmed his diagnosis, found that he had lacked the responsibility of his actions (*lipsa discernământului*), and considered that because of his potential aggressiveness and lack of compliance with treatment, he should be placed in medical detention.

14. On 8 August 2011 the prosecutor ended the investigation and sought the applicant's medical detention, under Article 114 of the Criminal Code applicable then (see *N. v. Romania*, no. 59152/08, § 83, 28 November 2017).

15. On 10 August 2011 the District Court accepted the prosecutor's proposal and ordered the applicant's placement in a psychiatric hospital until full recovery. The applicant and his court-appointed lawyer agreed to the prosecutor's request.

16. The applicant did not appeal. He explained that that decision had never been served on him. On an unspecified date, he was able to obtain a copy which he appended to the present application.

IV. EXTENSION OF MEDICAL DETENTION

17. On 20 September 2011 the applicant was admitted to Ştei Hospital for Psychiatry and Preventive Measures where he underwent six forensic psychiatric assessments by a commission of the Bihor Service for Forensic Medicine: on 21 June 2012, 5 February 2015, 3 October 2017, 30 May 2018, 27 March 2019, and 16 March 2021. On four occasions, including the most recent, in 2021, the commission recommended that medical detention be replaced with an obligation to undergo medical treatment either at the same hospital or at a psychiatric hospital closer to his home. Each time, his medical detention was extended by court decision.

18. In two such decisions submitted to the Court, i.e. final decisions of 23 July 2019 and 4 August 2020, the Bihor County Court found that the applicant's health had not improved to such an extent as to make it possible to apply the more lenient measure of compulsory medical treatment or to terminate his medical detention. It relied on the conclusions of the forensic reports and noted the applicant's advanced age, as well as the lack of social support to ensure that he would pursue his medical treatment if released from hospital. It also reiterated that he had committed criminal acts before his internment.

19. It appears from the documents submitted by the parties that the applicant was not divested of his legal capacity and was not placed under legal guardianship.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

20. The applicant complained about the detention and its extension. Although he relied on Articles 6 of the Convention and 2 of Protocol No. 7, the complaint falls under Article 5 (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018; and *N. v. Romania*, no. 59152/08, § 111, 28 November 2017).

21. The Court observes, despite the Government's assertions to the contrary, that the evidence indicates that the decision of 10 August 2011 (see paragraph 15 above) was not notified to the applicant who remains to this day unable to appeal against it (see paragraph 16 above) (see, in contrast, *N. v. Romania*, cited above, § 124). He thus complied with the requirements of Article 35 § 1 of the Convention.

22. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) or inadmissible on any other grounds. It must therefore be declared admissible.

23. The general principles concerning medical detention have been summarised in *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, §§ 123-37, 1 June 2021).

24. The applicant's medical detention was ordered by the courts based on the opinion of medical commissions which had assessed the applicant's condition before internment and had concluded that his psychiatric condition required admission to hospital for protection and treatment (see paragraph 13 above; ibid. § 135).

25. However, recent medical expert opinions indicated that his condition no longer required detention (see paragraph 17 above). The courts disagreed with those recommendations, referring to his alleged criminal past without, however, assessing the potential danger posed by him (see paragraphs 11 and 18 above and *N. v. Romania*, cited above, §§ 153-56). The courts also failed to assess the alternative measures proposed by the forensic commission in those reports (see *Mihailovs v. Latvia*, no. 35939/10, § 149 *in fine*, 22 January 2013). The Court considers that the applicant's age and lack of social support (see paragraph 22 above) are not sufficient to justify continued medical detention (see *N. v. Romania*, cited above, §§ 166-67).

26. There has accordingly been a violation of Article 5 § 1 (e) of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

27. The applicant complained, under Articles 6 of the Convention and 2 of Protocol No. 7, that he had been unable to participate in the proceedings concerning the validity of the 1964 sale (see paragraph 4 above).

28. The Court notes that this complaint, which falls under Article 6 § 1 of the Convention alone (see paragraph 20 above), is not manifestly ill-founded within the meaning of Article 35 § 3 (a) or inadmissible on any other grounds. It must therefore be declared admissible.

29. The general principles concerning access to court were summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-79, 5 April 2018).

30. The Court observes that the case was terminated for lack of the parties' participation (see paragraph 9). However, throughout the proceedings court notifications were served on the applicant by posting them on the door of the house (see paragraph 8 above), despite there being sufficient information available to the courts that he did not live there and was in need of a temporary guardian (see paragraphs 4 and 5 above). Moreover, at the time the appeal proceedings took place, the applicant was confined in a psychiatric hospital (see paragraphs 13 and 17 below).

31. The Court has already found that, at that time, the system in place in Romania concerning the service of court notifications by means of public notice (or posting) was too formalistic and that the courts were failing in their obligation to ensure effective participation in the proceedings (see *S.C. Raisa M. Shipping S.R.L. v. Romania*, no. 37576/05, §§ 29 and 32-35, 8 January 2013). It has no reason to find otherwise in the present case, there being no indication that the courts assessed whether the applicant had become acquainted with the dates of the hearings.

32. The Government asserted that the hospital had informed him of each notification received in his case; however, they provided no evidence to support their allegations.

33. Admittedly, V.S. was also informed of the proceedings (see paragraph 8 above). However, nothing in the file indicates that her mandate continued after the 19 April 2011 decision (see paragraphs 5 and 6 above). Moreover, the applicant complained about her actions in his appeal (see paragraph 7 above). Despite that, no measures were taken by the authorities (Sibiu County Court and social welfare authority) to provide the applicant with appropriate assistance, such as a new temporary guardian.

34. Moreover, at that time, the protection afforded to persons with mental disabilities in Romania was deficient as the law did not allow for a nuanced response to individual situations, providing for either complete legal incapacitation or no protection whatsoever (see *N. v. Romania (no. 2)*, no. 38048/18, §§ 63-65, 16 November 2021). There is no indication that the situation was different in the present case.

35. It thus appears that the applicant was left without any possibility to participate in the proceedings and adequately present his case either personally or through the offices of a temporary guardian.

36. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. REMAINING COMPLAINTS

37. The applicant also raised other complaints under various Convention provisions. The Court has examined that part of the application and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. The applicant claimed 1,000,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. He made no claim in respect of costs and expenses.

39. The Government contested the claim.

40. The Court first notes that applicant failed to substantiate his pecuniary damage claims; it therefore rejects this claim.

41. As to the non-pecuniary damages, the Court recalls that, where, as in the instant case, an individual has been the victim of proceedings that have entailed breaches of the requirements of Article 6 of the Convention, a retrial or the reopening of the case, if he or she so requests, represents in principle an appropriate way of redressing the violation (see *Cudak v. Lithuania* [GC], no. 15869/02, § 79, ECHR 2010, with further references). The Court considers that in the present case an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of the guarantees of Articles 5 and 6. While it cannot speculate as to the outcome of the domestic proceedings had the position been otherwise, the Court does not find it unreasonable to regard the applicant as having been deprived of a real opportunity. In addition, the applicant has sustained non-pecuniary damage which the finding of a violation of the Convention in this judgment does not suffice to remedy. Having regard to the nature of the violations found and making its assessment on an equitable basis, as required by Article 41, the Court awards the applicant EUR 16,300 in respect of non-pecuniary damage.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the medical detention and lack of access to a court admissible and the remainder of the application inadmissible;

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

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 16,300 (sixteen thousand three hundred euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 31 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Crina Kaufman Acting Deputy Registrar	Faris Vehabović President