

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

FOURTH SECTION

CASE OF TOADER v. ROMANIA

(Application no. 22415/22)

JUDGMENT

STRASBOURG

12 March 2024

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



In the case of Toader v. Romania,

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

Tim Eicke, *President*,
Branko Lubarda,
Ana Maria Guerra Martins, *judges*,
and Crina Kaufman, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 22415/22) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 3 May 2022 by a Romanian national, Ms Ana Toader ("the applicant"), who was born in 1933, lives in Filioara - Agapia and was represented by Mr T.A. Chiuariu, a lawyer practising in Bucharest;

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 decision to give priority to the application (Rule 41 of the Rules of Court);

the parties' observations;

Having deliberated in private on 20 February 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant's complaint that the domestic authorities had wrongly assessed the severity of her disability, thus depriving her of the possibility of benefitting from a personal assistant, which in turn had drastically reduced her personal autonomy.

2. The applicant is a 90-year-old retired widow. Since 2020 she has suffered from several orthopaedic conditions (including periprosthetic fractures and gonarthrosis) which developed following a leg fracture and subsequent prosthetic implants. She lives alone in her house and is assisted in her daily activities by her daughter-in-law, who lives in the same village.

3. According to various medical and social investigation reports, the applicant is bedridden and needs help with eating and personal hygiene. She is fully dependent on support for her daily needs.

4. On 4 August 2020, following a visit to the applicant's home to assess her living arrangements and their compatibility with her medical situation, social workers from the local municipality delivered a social inquiry report. According to that report, the applicant was a retired widow who lived alone in her house; she had an adult son living in the same village; she was bedridden; she needed help with eating and with her personal hygiene and personal finances; and she was fully dependent on support for dressing

herself, for moving around and transport, housework, using means of communication, preparing food and doing the groceries. The report noted that the applicant needed a personal assistant.

5. The report also indicated that the house in which the applicant lived consisted of one room, a kitchen, and a toilet, the latter located outside. There was cold running water and a well, and heating was provided only by a fireplace.

6. On 14 September 2020 a complex evaluation report was conducted by a team composed of a social worker, a doctor and a psychologist. They found that the applicant lived alone in a house that she owned and that she was bedridden, communicated with difficulty owing to hearing loss for which she didn't have hearing aids, and that her daughter-in-law was the person who looked after her. The report further stated that apart from her orthopaedic conditions, the applicant was also suffering from constant sadness and incipient cognitive deterioration. According to the report, the applicant displayed a high degree of dependency and limited ability to complete daily tasks. The report noted that, because of her situation, the applicant would need to benefit from the "maximum level of protection". The report also found that applicant's monthly retirement pension was 704 Romanian lei (RON), which represented approximatively 145 euros (EUR).

7. On 2 October 2020 the Neamț Commission for the Evaluation of Adults with Disabilities ("the Neamț Commission") issued a certificate establishing that the applicant's medical situation did not qualify as a disability under the criteria established by Ministerial Order no. 762/1992/2007 of 31 August 2007.

8. Based on the findings of the evaluation report of 14 September 2020 and on other evidence, the applicant lodged an application seeking the annulment of that certificate and the issuance of a new one attesting that she had a severe disability necessitating a personal assistant. On 2 April 2021 the Neamţ County Court allowed the applicant's request and ordered the Neamț Commission to issue a new certificate acknowledging that the applicant was suffering from a severe disability and that she was in need of a personal assistant.

9. The Neamț Commission appealed against that decision. By a final decision of 19 October 2021, notified to the applicant on 5 November 2021, the Bacău Court of Appeal dismissed the applicant's request on the ground that, despite her dependency and need for personal assistance for all her daily tasks, her condition could not be considered a disability under the relevant Romanian legislation as it was not mentioned in Chapter 7.I.1 of the Ministerial Order no. 762/1992/2007 of 31 August 2007, listing the orthopaedic conditions that are considered as disabilities. The relevant parts of the decision read as follows:

> "The existence of certain conditions, which is not challenged by the parties, does not automatically justify granting [recognition of] a certain degree of disability when the

medico-psychosocial criteria mentioned in Order no. 762/1992/2007 are not complied with.

... [The appeal court cannot uphold] the reasoning of the first instance court regarding the necessity of [recognising that] the applicant [has] a severe degree of disability and is in need of a personal assistant on the basis of [her] total or partial dependence on another person in carrying out daily activities, as well as the fact that she is immobilised in bed, and in need of mobility assistance for movement inside and outside her place of residence."

10. The applicant complained under Article 8 of the Convention taken alone and, in substance, in conjunction with Article 14 of the Convention that the domestic courts had failed to undertake a complex evaluation of her disability and medical condition.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

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

12. The general principles concerning the State's positive obligations to ensure the right to respect for private life in the context of a refusal to grant an applicant the right to the adequate support needed for his or her medical condition or disability have been summarised in *Jivan v. Romania* (no. 62250/19, §§ 40-42, 8 February 2022).

13. The Court reiterates that a wide margin is usually allowed to the State under the Convention in issues of general policy, including social, economic, and healthcare policies (see, for instance, *McDonald v. the United Kingdom*, no. 4241/12, § 54, 20 May 2014, with further references). However, if a restriction on fundamental rights applies to a particularly vulnerable group in society that has suffered considerable discrimination in the past, such as persons with disabilities, or elderly dependent people, then the State's margin of appreciation is substantially narrower and it must have very weighty reasons for the restrictions in question (see *Jivan,* cited above, § 42, with further references).

14. As the Court noted in the judgment in the case of *Jivan* (cited above, § 43), the Romanian Disability Act calls for the protection of people with disabilities in the light of the guiding principles enshrined in that Act, including freedom of choice, social inclusion and respect for the specific needs of the individuals concerned. The level of protection afforded is based on a complex and personalised evaluation to establish an individual's level of disability. That assessment must rely not only on medical data but also on other indicators of the individual's degree of autonomy (or lack thereof), assessed in the light of his or her living conditions.

15. On the basis of the domestic legal requirements, social services assessed that the applicant had a high degree of dependency and a limited ability to complete daily tasks, and required a personal assistant in order to meet her basic needs (see paragraphs 4 and 6 above). However, the Neamț Commission issued a certificate establishing that the applicant's medical situation did not qualify as a disability under the criteria set out in Ministerial Order no. 762/2007 of 31 August 2007 (see paragraph 7 above). That assessment was also shared by the Court of Appeal, which was the final domestic court to examine the merits of the case (see paragraph 9 above). The Court cannot but observe that those findings seem to be fundamentally at odds with the applicant's particular situation as explained in detail in the report of 14 September 2020 (see paragraph 6 above).

16. In the light of the principle of subsidiarity, it is not for the Court to substitute its views for those of the national authorities and to interpret and apply the domestic law. The domestic courts, however, to whom that task falls, must interpret the domestic law in a manner which is compliant with the States' obligations under the Convention (see *Jivan*, cited above, § 47).

17. In this connection, the Court cannot but note that the Neamț Commission and the Court of Appeal focused their assessment on the applicant's orthopaedic conditions, which appeared after she suffered a broken leg, while merely acknowledging her high degree of dependency and limited ability to perform daily chores (paragraph 9, above). In her claims before the authorities the applicant raised arguments related to her broader situation, both medical and social, and provided evidence to support her action in the domestic courts. In the Court's view, those arguments were specific, relevant and important, and the Government did not argue otherwise. However, neither the Neamț Commission, when issuing the certificate of 2 October 2020 (see paragraph 7 above), nor the Court of Appeal, in its final decision of 19 October 2021, genuinely engaged with them.

18. In particular, the applicant's right to autonomy and respect for her dignity do not appear to have been taken into account in the domestic assessments. Moreover, no consideration was given by the authorities to the applicant's age. In stark contrast with the judicial decision of 2 April 2021 of the Neamț County Court (see paragraph 8, above), there was nothing in the decisions of the Neamț Commission or the Court of Appeal to explain the apparent discrepancies between the applicant's particular situation of a lack of autonomy and the finding that her medical situation did not qualify as a disability under Chapter 7.I.1 of the Ministerial Order no. 762/1992/2007 of 31 August 2007, which listed the orthopaedic conditions considered as disabilities (see paragraph 9 above). As a consequence of those decisions the applicant was left to fend for herself while the authorities did not offer any alternative practical arrangements to ensure her the constant support she needed (see *Jivan*, cited above, § 49).

19. Bearing in mind what was at stake for the applicant, as well as her overall vulnerability – which required enhanced protection from the authorities, and notwithstanding its subsidiary role and the respondent State's margin of appreciation, the Court is not convinced that in their decisions, the Commission and the Court of Appeal struck a fair balance between the competing public and private interests at stake as required by Article 8.

20. There has accordingly been a violation of Article 8 of the Convention.

II. OTHER COMPLAINTS

21. The applicant also complained under Article 14 read in conjunction with Article 8 of the Convention. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

23. The Government argued that the finding of a violation should constitute sufficient just satisfaction. They also pointed out that in the case of *Jivan* (cited above) the Court had made an award of EUR 8,000 in respect of non-pecuniary damage.

24. The Court awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 14 of the Convention read in conjunction with Article 8 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 10 000 (ten thousand 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.

Done in English, and notified in writing on 12 March 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Crina Kaufman	Tim Eicke
Acting Deputy Registrar	President