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

FOURTH SECTION

DECISION

Application no. 29106/13
Vasile COMAN
against Romania

The European Court of Human Rights (Fourth Section), sitting on 31 May 2016 as a Committee composed of:

Krzysztof Wojtyczek, *President,*
Iulia Motoc,
Gabriele Kucsko-Stadlmayer, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 15 April 2013,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Vasile Coman, is a Romanian national, who was born in 1949 and lives in Vişeu de Sus. He was represented before the Court by Mr C. Cojocariu, a lawyer practising in Orpington.

2. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Criminal investigation against the applicant

4. On 5 September 2012 a criminal investigation was started in respect of the applicant (*începerea urmăririi penale*), who was accused of having distributed, from 16 until 20 August 2012, flyers containing obscene graphic representations, caricatures and obscene texts about the local public institutions of Vişeu de Sus, notably the police, the prosecutor's office, the district court and their staff.

5. On 17 September 2012 the prosecutor ordered a psychiatric evaluation of the applicant under Articles 116-117 of the Code of Criminal Procedure ("the CCP"). The prosecutor asked experts to establish whether the applicant had understood what he was doing when he had committed the alleged actions, whether he had had full legal responsibility for his acts and whether specific preventative measures should be taken against him. The investigators had knowledge that the applicant had previously been admitted to a psychiatric hospital in 1988.

6. On 30 April 2014 the Vişeu de Sus District Court acquitted him of the accusation of spreading pornographic material, finding that the deed had been decriminalised.

2. The applicant's confinement

7. On 18 September 2012, at 6 p.m., the applicant was taken by the police to the psychiatric hospital in Sighetul Marmaţiei for psychiatric evaluation.

8. Upon admission to the hospital, the applicant underwent a general physical and physiological examination. No allergies were noted in the hospital medical record drafted upon his admission (*fişa de observaţie clinică generală*).

9. On the morning of 20 September 2012 he was examined by a psychologist.

10. On the same day he was injected with Haldol (an antipsychotic drug prescribed for the treatment of acute psychosis or schizophrenia). The applicant described that he had been held down by four people, tied to his bed, and injected with that substance (even though he had informed the staff that he was allergic to "injected medication"). Dr G.N., the doctor in charge, explained that the applicant had had to be restrained because of his state of agitation. The applicant's skin began to itch and complained that he was experiencing anaphylactic shock because of the medicine. According to him, he was kept tied to his bed for three hours. The hospital medical record indicates that the applicant received a dose of Haldol. There is no mention of the use of any physical restraint.

11. On 21 September 2012 a medical report was drafted. It indicated that the applicant suffered from a delusional disorder. The report noted that this was the first time the applicant had been admitted to a psychiatric hospital. The conclusions read as follows:

> "(1) In the light of the psychological and psychiatric investigations undertaken during the [patient's] stay in the hospital and of the examination by a commission, it is considered that he exhibits:
>
> ... persistent delirious disorder – paranoia [*tulburare delirantă persistentă – paranoia*]
>
> (2) [The patient] does not have full psychiatric capacity to understand the content and the consequences of his actions. His legal capacity was diminished at the time when he committed the deeds and [is still diminished] today.
>
> NOTE: the commission recommends and approves the application of Article 113 [of the Criminal Code]."

Outpatient treatment was recommended under the provisions of Article 113 of the Criminal Code, which allows the authorities to take such a preventative measure if they deem it necessary. He was issued a prescription for anti-histamine medication.

12. On 21 September 2012 he was released from hospital.

13. On 22 November 2012 the applicant asked the Vişeu de Sus police to show him the legal basis for the ordering of his psychiatric confinement and the decision on which it was based. He received no response to his request.

14. Prompted by the Government after the communication of the case, the psychiatric hospital made available the hospital medical record and a detailed account of the applicant's stay in hospital written by Dr G.N., who had seen the applicant during his hospitalisation. The relevant excerpts of the latter read as follows:

> "The patient was brought by the police with the required paperwork for an expert psychiatric evaluation in connection with a criminal case, and was placed under supervision, in accordance with the rules on involuntary confinement. ...
>
> We needed, for the expert evaluation requested, a psychological evaluation but that had to be postponed because the hospital's psychologist was on holiday, and for that reason we could not indicate [to the applicant] for how long he would have to stay in hospital. This uncertainty became even more unbearable for the patient, who was demanding even more insistently to be released and was threatening to go on hunger strike, being incapable of observing the laws and internal regulations, which had been brought to his attention. This was the moment when we decided to administer a neuroleptic medicine – against his will, but rendered necessary by the patient's state of continuous agitation and by the fact that he was becoming more turbulent and threatening towards the staff (we used an injectable form [of the medicine], as he refused any oral medication). I was informed the next day that he had had to be [physically] restrained because he had been very agitated and refused any treatment ..."

3. Criminal complaint against the hospital staff

15. On 21 September 2012 the applicant lodged a criminal complaint against doctors at the psychiatric hospital in Sighetul Marmaţiei, whom he accused of attempted murder and torture. He referred to the compulsory

treatment received on 20 September 2012 and stated that the doctors and nurses had ignored his allergies and injected him with Haldol without any prior medical investigation, thus causing anaphylactic shock. He also stated that he had been tied to a bed in order to be administered the injection and that despite his allergic reaction to the medicine, he had been kept tied to his bed for two or three more hours.

16. Dr G.N. and M.M., respectively the doctor and the male nurse on duty that night, gave statements before the prosecutor in charge of the case. They explained the reasons why they needed to prescribe and respectively administer the tranquilizer.

17. On 15 November 2012 the complaint was dismissed by the prosecutor's office attached to the Sighetul Marmaţiei District Court. The prosecutor noted that the allergic reaction experienced by the applicant had been a side-effect of the medication and that the medical protocol had not required that any allergy tests be undertaken prior to the administration of Haldol. The prosecutor found that the administration of Haldol had not constituted a criminal offence.

18. The applicant appealed, reiterating that the doctors had failed to conduct any medical investigations before administering the drug. He further argued that the prosecutor had not identified the four individuals who had tied him to his bed despite the state of distress caused by the allergic reaction. On 27 December 2012 the Chief Prosecutor (from the same prosecutor's office) rejected his complaint.

19. The applicant appealed again, but on 12 February 2013 the Sighetul Marmaţiei District Court dismissed his claims as unfounded.

4. Complaint to the College of Doctors

20. On 1 October 2012 the applicant lodged a complaint with the College of Doctors (*Colegiul Medicilor din România*), claiming that his confinement had been unlawful, the treatment received had been harmful and the conclusion of the expert report had been incorrect. He argued that the specific diagnosis had made in accordance with police instructions and had failed to take into account the fact that he had not had any mental issues in the past. He requested that a new examination take place at the Forensic Institute in Bucharest.

21. On 24 October 2013 the disciplinary board of the Maramureş College of Doctors established that it did not have the power to examine the lawfulness of the confinement. As regards the medical care that the applicant had received, it indicated that the diagnosis and treatment applied to the applicant had been correct, and that the applicant had had the right to seek another expert examination. It found that there had been no medical malpractice or errors in the manner in which the applicant's case had been dealt with in the hospital. It sent the decision to the applicant and informed him, *inter alia*, of the time-limits for contesting it.

22. The applicant contested the decision, but on 14 February 2014 the Superior Commission for Discipline of the College of Doctors declared the objection null and void because it had been lodged out of time. The applicant did not object to this decision before the relevant courts.

B. Relevant domestic law and practice

23. Involuntary psychiatric confinement is regulated by Law no. 487/2002 on mental health and the protection of persons with mental disorders. The relevant provisions are described in *Stelian Roşca v. Romania*, no. 5543/06, §§ 43-48, 4 June 2013); *Parascineti v. Romania* (no. 32060/05, §§ 25-29, 13 March 2012); and *Cristian Teodorescu v. Romania* (no. 22883/05, §§ 30-39, 19 June 2012).

24. (i) The Committee for the Prevention of Torture ("the CPT"), following its visit to inspect several Romanian hospitals of 28 September-2 October 2009, report CPT/Inf (2010) 26), (ii) Amnesty International in 2004 (see *Cristian Teodorescu*, cited above, § 40) and (iii) the Centre for Legal Resources in 2009 (see *Parascineti*, cited above, § 30) all described unsatisfactory conditions in which inpatients were being held in psychiatric hospitals in Romania and the absence of free and informed consent to the treatment received. The CPT general standards contain specific rules on restraining patients in psychiatric establishments (CPT's General Reports CPT/Inf/C (2002) 1 [Rev. 2015]).

25. The Government submitted examples of domestic decisions whereby the national courts had examined on the merits complaints lodged against decisions rendered by the College of Doctors, both by doctors who had been sanctioned and by patients unsatisfied with the outcome of the proceedings before that authority. They also submitted a decision adopted in respect of a claim for civil damages lodged by a former patient against the doctor who had operated on her and the hospital in which that doctor had performed allegedly defective surgery.

COMPLAINTS

26. The applicant complains under Article 3 of the Convention that on 20 September 2012 the hospital personnel administered medical treatment without consulting him, his family or his physician, and that the treatment administered was very harmful to his health.

27. Relying on Article 5 of the Convention, he complains that he was admitted into the hospital against his will and held in prison-like conditions.

THE LAW

A. Alleged violation of Articles 3 and 8 of the Convention

28. Under Article 3 of the Convention, the applicant complained that, while being held against his will in the psychiatric hospital, he had been tied to his bed by four individuals and administered treatment without any prior medical check-up having been undertaken and without consent having been sought from him, his family or his physician. Furthermore, that treatment had proved to be harmful to him.

29. The complaint was communicated to the respondent Government under Articles 3 and 8 of the Convention, which read as follows:

Article 3 (prohibition of torture)

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8 (right to respect for private and family life)

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

1. The parties' position

30. The Government contended that the applicant had failed to complain before the domestic court against the decision adopted on 14 February 2014 by the Superior Commission for Discipline of the College of Doctors. This would have constituted an effective remedy for the complaints raised under Articles 3 and 8 of the Convention.

31. In their view, there was no indication that the use of restraining methods had been disproportionate or unjustified, given the circumstances of the case.

32. The applicant argued that in pursuing the criminal complaint, he had observed the obligation to exhaust the domestic remedies.

33. The applicant argued that he had been forcibly medicated and strapped to his bed for the sole reason that he had been complaining vehemently about the conditions of his detention (for example, asking how long he would be confined). He made reference to *Plesó v. Hungary*, no. 41242/08, § 67, 2 October 2012.

34. He further contended that the legal safeguards against abuse, including proper recording, supervision and notification of the measure of physical restraint had been recklessly disregarded.

35. Lastly, the applicant argued that the official investigation into the allegations of ill-treatment had been exceedingly superficial.

2. The Court's assessment

(a) General principles

36. The Court reiterates that the obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances (see, among other authorities, *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 222, ECHR 2014 (extracts), with further references).

37. The Court makes further reference to the general principles it has developed it its case-law in connection to Articles 3 and 8 in the context of mentally ill patients (see notably, *mutatis mutandis*, M.*S. v. Croatia* (*(no. 2)*, no. 75450/12, §§ 94-98, 19 February 2015 and *B. v. Romania (no. 2)*, no. 1285/03, §§ 85-92, 19 February 2013).

(b) Application of those principles to the facts of the case

38. The Court considers that the complaint refers primarily to the use of restraint, both chemical and physical, in hospital. It therefore concerns allegations of ill-treatment and a breach of the right to respect for his private life in a public hospital (see, *mutatis mutandis*, *Bureš v. the Czech Republic*, no. 37679/08, § 78, 18 October 2012). It reiterates that the responsibility of the authorities for the situation complained of could be engaged, in so far as the actions in question were undertaken in a State-run institution by medical staff who were effectively State employees (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* ([GC], no. 47848/08, § 134, ECHR 2014; *Atudorei*, cited above, § 139; and *G.B. and R.B. v. the Republic of Moldova*, no. 16761/09, § 25, 18 December 2012).

39. The Court notes that the medical staff's behaviour had been extensively examined by the domestic authorities (notably, prosecutor, courts and the College of Doctors). In particular, the prosecutor concluded that the medical staff had been justified in administering the tranquilizer, given the applicant's state of agitation, and that the medical protocol had been observed. The Court has no reason to question the manner in which the facts were established and interpreted by the prosecutor and the domestic courts, which are ultimately better placed to assess the matter (see *E.M. and Others v. Romania* (dec.), no. 20192/07, § 55, 3 June 2014). The Court is also satisfied, on the basis of the medical evidence examined by the domestic authorities and their conclusions, that in the absence of any

mention of allergies in the applicant's medical report, it could not be expected that the doctors would undertake in-depth examinations to determine any possible allergic reactions where the relevant protocols do not so require. It further notes that faced with the unfortunate side effects of the medication, the medical staff took action and prescribed the applicant adequate treatment.

40. The Court further observes that it is not clear whether the criminal investigation also covered the use of physical restraints against the applicant. However, it notes that the only evidence concerning the use of physical restraints comes from the account drawn up by Dr G.N. at the Government's request (see paragraph 14 above). According to this statement, the use of physical restraint was made necessary by the applicant's behaviour, thus being proportionate to the aim sought to be achieved. The Court has no reason to find otherwise.

41. In this context, the decisions rendered by the College of Doctors lend force to the above findings. The unfavourable outcome for the applicant does not constitute sufficient grounds for finding the respondent State liable under the Convention, and is thus of no material relevance in this respect (see, *mutatis mutandis*, *Sevim Güngör v. Turkey* (dec.), no. 75173/01, 14 April 2009; and *E.M.*, cited above, § 50). Moreover, those decisions were not properly contested by the applicant (see paragraphs 21 and 22 above) who could have objected to those findings before the domestic courts (see paragraph 25 above).

42. The only shortcomings that could be imputable to the authorities are the lack of prior approval by a doctor and the absence of a medical log entry, for the use of physical restraints. However, regrettable as they may be, these aspects are not sufficient to trigger a violation of Articles 3 and/or 8 of the Convention.

43. On the basis of the elements at its disposal, and mindful of its subsidiary role in the establishment of facts, the Court concludes that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violation of Article 5 of the Convention

44. The applicant complained that he had been admitted to the psychiatric hospital against his will and held in prison-like conditions. He relied on Article 5 of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; ..."

1. Arguments raised by the parties

45. The Government argued that the applicant had not exhausted the effective domestic remedies at his disposal. He could have notably objected to the prosecutor's decision of 17 September 2012, but did not do so.

46. The Government further argued that, if the applicant considered that he had had no effective remedy at his disposal, he should have lodged his complaint before the Court within six months of the date on which he had been released from the psychiatric hospital, which he had failed to do.

47. The applicant reiterated that the confinement procedure provided by Article 117 of the CCP was arbitrary and had been left to the complete discretion of the prosecutor. He reiterated that in the case of *C.B. v. Romania* (no. 21207/03, 20 April 2010) a similar complaint against the prosecutor's decision had been dismissed. As for his particular situation, he reiterated that he had not been in a position to challenge the prosecutor's decision of 17 September 2012 (see paragraph 5 above) since he had in fact not been formally notified of its existence either before or after his confinement.

48. Invoking the uncertainty surrounding the procedure under Article 117 of the CCP, the applicant argued that the six-month rule should be applied with more flexibility and that it should be considered either that the violation of Article 5 § 1 was ongoing or that the time-limit had not even started to run in so far as the applicant had still not been notified of the prosecutor's decision.

2. The Court's appraisal

(a) General principles

49. The Court reiterates the general principles it has established concerning the obligation to exhaust domestic remedies (see paragraph 36 above and *Akopyan v. Ukraine,* no. 12317/06, § 84, 5 June 2014.

50. Furthermore, as a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (see, among other authorities, *Mocanu and Others*, cited above, § 259, with further references).

(b) Application of those principles to the facts of the case

51. In the case at hand, the Court considers that the material in the file does not allow it to conclude, without doubt, that the applicant had at his disposal an effective domestic remedy, according to the requirements of Article 5 (see paragraph 49 above), to complain against his psychiatric

confinement and thus to have the legality of that measure examined by the domestic authorities. None of the actions brought by the applicant with the domestic authorities was capable of establishing the lawfulness of his confinement (see, *mutatis mutandis, C.B.*, cited above, §§ 64-67). In these circumstances, the Court considers that the applicant should have lodged his complaint within six months of the date on which the situation complained of ended.

52. Therefore, if the applicant was persuaded, as he convincingly argued before the Court, that he had no effective remedy at his disposal, he should have presented his case before the Court within six months of the date on which the alleged breach (that is to say his confinement) ended (on 21 September 2012). However, by only lodging his complaint on 15 April 2013, he failed to do so.

53. It follows that this complaint was introduced out of time and must be rejected, in accordance with Articles 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 23 June 2016.

Fatoş Aracı
Deputy Registrar

Krzysztof Wojtyczek
President