



## Disclosure of being HIV positive in a military service exemption certificate breached privacy rights

In today's **Chamber** judgment<sup>1</sup> in the case of [P.T. v. the Republic of Moldova](#) (application no. 1122/12) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.**

The case concerned disclosure of the applicant's HIV positive status in a certificate exempting him from military service. He complained that he had had to show the certificate when renewing his identification papers in 2011 and in certain other situations, such as whenever he applied for a new job.

The Court found in particular that the Moldovan Government had not specified which "legitimate aim" of Article 8 of the Convention had been pursued by revealing the applicant's illness. Moreover, they had not explained why it had been necessary to include sensitive information about the applicant in a certificate which could be requested in a variety of situations where his medical condition had been of no apparent relevance. Such a serious interference with his rights had been disproportionate.

### Principal facts

The applicant, Mr P.T., is a Moldovan national who was born in 1978 and lives in Sângera (the Republic of Moldova). He is HIV positive.

In July 2011 the Military Centre issued Mr P.T. with a certificate exempting him from military service, after doctors confirmed his illness. The certificate was based on a model set out in Government decision no. 864 of 17 August 2005.

When renewing his identity card in August 2011, he was obliged to show the exemption certificate.

In 2012 the Moldovan Constitutional Court handed down a ruling finding that such exemption certificates disproportionately interfered with the right to protection of private life because they disclosed confidential information on a person's illness to third parties, including potential employers.

### Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 2 December 2011.

Relying on Article 8 (right to respect for private and family life), the applicant complained about the disclosure of his personal medical data in the exemption certificate. He argued that he had not filed such a complaint with the domestic courts because it would have had no prospects of success. He cited a case concerning an HIV positive man, B., who had brought two court actions complaining that

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

his exemption certificate had disclosed his illness to third parties, but which had both been rejected by the Supreme Court of Justice, in 2010 and 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Robert **Spano** (Iceland), *President*,  
Marko **Bošnjak** (Slovenia),  
Valeriu **Grițco** (the Republic of Moldova),  
Egidijus **Kūris** (Lithuania),  
Arnfinn **Bårdsen** (Norway),  
Darian **Pavli** (Albania),  
Peeter **Roosma** (Estonia),

and also Stanley **Naismith**, *Section Registrar*.

### Decision of the Court

The Government argued that the applicant had not exhausted all domestic remedies as he had not brought any proceedings before the Moldovan courts.

The Court found that although there was a remedy available in theory and in practice for the applicant to complain, as shown in the case brought by B., which was very similar to that of the applicant, it had not been effective. In particular, the content of the exemption certificate was expressly dictated by Government decision no. 864, which was mandatory and could not be reviewed by the courts. Therefore any court action aimed at changing the certificate was bound to fail, as confirmed by the outcome of B.'s two court actions.

The Court therefore dismissed the Government's objection and declared the applicant's complaint admissible.

It then went on to find, like the Constitutional Court, that the inclusion of medical data in a certificate which was to be provided to third parties had constituted an interference with the applicant's rights protected under Article 8 of the Convention. That interference had been in accordance with the domestic law, namely Government decision no. 864, at the time the applicant had lodged his application.

However, neither the Government nor the authorities had referred to any specific legitimate aim of such interference with the applicant's rights. In fact, revealing the applicant's illness did not appear to have a rational basis or connection to any of the legitimate aims foreseen in Article 8 of the Convention.

The Court found, moreover, that the personal medical data in the certificate had not been sufficiently protected from unnecessary disclosure. In particular, third parties were allowed to find out the type of illness which had exempted the applicant from military service, even if they had no ostensible interest in having access to that information.

Indeed, the Government had not explained why it had been necessary to include such sensitive information in a certificate which could be requested in a variety of situations where the applicant's medical condition had been of no apparent relevance, such as when applying for employment.

Accordingly, the interference with the applicant's right had been disproportionate, in violation of Article 8 of the Convention.

### Just satisfaction (Article 41)

The Court held that the Republic of Moldova was to pay the applicant 4,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,500 in respect of costs and expenses.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.