



The applicants' confinement in a psychiatric hospital and their forced medical treatment breached the Convention

In today's **Committee judgment**¹ in the case of [R.D. and I.M.D. v. Romania](#) (application no. 35402/14) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights, and

a violation of Article 8 (right to respect for private life).

The case concerned the applicants' non-voluntary confinement in a psychiatric hospital for the purpose of compelling them to undergo medical treatment, and the obligation to follow that treatment.

The Court noted that the relevant psychiatric forensic medical reports in respect of the applicants had been prepared on 4 October 2011, that is, more than three years before the measure ordering their placement in a psychiatric hospital. In the Court's opinion, the lack of a recent medical assessment was sufficient to conclude that the applicants' placement had not been lawful under the Convention. Additionally, the lack of detailed reasoning in the national court decisions ordering their confinement did not allow it to be established sufficiently that the applicants posed a risk to themselves or others, in particular because of their psychiatric condition.

The Court considered that although the contested measure had indeed had a legal basis in Romanian law, the absence of sufficient safeguards against forced medication had deprived the applicants of the minimum degree of protection to which they were entitled in a democratic society.

Principal facts

The applicants, Mr R.D. and Ms I.M.D., are Romanian nationals who were born in 1967 and 1982 respectively and live in Ștei.

On 27 September 2011 they were stopped by police officers, who asked them to disclose their identities. They refused and apparently began to strike a police officer. A criminal investigation was opened for offending public morality and breach of the peace.

On 3 October 2011 the prosecutor's office at the Șimleul Silvaniei Court of First Instance, which was responsible for the investigation, asked the Zalău public hospital to prepare psychiatric forensic reports in respect of Mr R.D. and Ms I.M.D. Two forensic medical assessments, dated 4 October 2011 and prepared by the forensic department at Sălaj Hospital, stated that both applicants were suffering from persistent delusional disorders and that, in general, their discernment was impaired. The medical board recommended to Mr R.D. and Ms I.M.D. that they undergo psychopharmacological and psycho-therapeutic treatment on an outpatient basis in a specialised medical unit.

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.

By an order of 11 October 2011, the prosecutor's office held that there was no case for the applicants to answer, and considered that their mental health meant that they lacked criminal responsibility for the offences of which they were accused.

In a judgment of 6 June 2013, which was based primarily on the forensic assessments of 4 October 2011 and on Article 113 of the Criminal Code as in force at the time of the facts of the present case, the Șimleul Silvaniei Court of First Instance adopted a measure in respect of the applicants, imposing compulsory treatment. The Sălaj County Court upheld that judgment.

As Mr R.D. and Ms I.M.D. did not report to the hospital to receive the medical treatment that had been prescribed for them, the Sentence Enforcement Office at the court of first instance appealed against the execution of the judgment of 6 June 2013. It asked that the compulsory treatment measure be replaced by a measure ordering medical confinement and submitted that the applicants were refusing to follow their medical treatment.

By a judgment of 10 November 2014, the first-instance court ordered that the safety measure imposing compulsory treatment be replaced by the compulsory medical confinement of the applicants, until they were cured or until their health had improved to such an extent that they no longer posed a threat to public order. Mr R.D. and Ms I.M.D. appealed against that judgment, arguing that they were in good health and that the authorities wished to place them in confinement for other reasons. The country court dismissed their appeal.

On 30 December 2014 Mr R.D. and Ms I.M.D. were placed, against their will, in a psychiatric hospital. They are still detained there today and are undergoing medical treatment based on sedatives and antipsychotic medication.

By a judgment of 23 February 2017 based on the medical documents and a forensic medical report of 13 April 2016, the Șimleul Silvaniei Court of First Instance granted a request by Ms I.M.D.'s mother for her daughter to be placed under guardianship, and for she herself to be appointed as guardian. At the psychiatric hospital's request, the Pericei town council requested that Mr R.D. be placed under guardianship. A forensic psychiatric report of 11 January 2017 stated that he was suffering from persistent delusional disorders and that his discernment was impaired. The deputy mayor of Pericei was named as this applicant's guardian.

Complaints, procedure and composition of the Court

Relying on Articles 5 § 1 (right to liberty and security) and 8 (right to respect for private and family life), the applicants complained about their compulsory confinement, which they considered to be unjustified and arbitrary. They also alleged that they had been compelled to undergo medical treatment since the beginning of their confinement. Relying on Article 34 (right of individual application), they complained of interference with their exercise of the right of individual application. Under Article 38 (obligation to furnish necessary facilities for examination of the case), they submitted that the Romanian State had failed to comply with its obligations.

The application was lodged with the European Court of Human Rights on 28 April 2014.

Judgment was given by a committee of three judges, composed as follows:

Gabriele Kucsko-Stadlmayer (Austria), *President*,
Iulia Antoanella Motoc (Romania), and
Pere Pastor Vilanova (Andorra),

and also Ilse Freiwirth, *Deputy Section Registrar*.

Decision of the Court

Article 5 § 1

The Court noted that two forensic medical reports had established that the applicants were suffering from persistent delusional disorders, that they suffered from a lack of discernment and that they ought to undergo medical treatment. However, these expert assessments had been conducted on 4 October 2011, that is, more than three years prior to the compulsory confinement measure imposed on 17 December 2014. In the Court's opinion, the lack of a recent medical assessment alone was sufficient to conclude that the applicants' placement had been unlawful under Article 5 § 1 (e).

In addition, the Court reiterated that the confinement of a person had to be duly justified by the seriousness of the person's condition in the interests of ensuring his or her own protection or that of others. In the present case, however, and in the absence of detailed reasoning on this matter in the domestic decision ordering their confinement, the Court considered that it had not been established that the applicants posed a risk of injury to themselves or others, in particular because of their psychiatric condition.

The Court noted, however, that the expert reports which had been prepared since 2018 were much more detailed and that the authorities' decisions gave specific grounds for finding that it was necessary to maintain the internment measure. These assessments and the decisions included in the case file showed that the national authorities had verified whether the applicants' mental disorders persisted or whether they had stabilised. They had found that the applicants' condition required that the measure be maintained, but these decisions did not indicate that an assessment had effectively been made of the level of danger potentially posed by the applicants to themselves or to others.

In consequence, the Court concluded that there had been a violation of Article 5 § 1 of the Convention.

Article 8

The Court reiterated that the forced administration of medication represented a serious interference with a person's physical integrity and had accordingly to be based on a "law" which guaranteed proper safeguards against arbitrariness.

The Court noted that the confinement measure imposed on the applicants by the judgment of 10 November 2014 had been based on the provisions of the Criminal Code and of the Code of Criminal Procedure, and that it had therefore had a basis in Romanian law.

However, the Court noted that none of the relevant legal provisions in this case set out the regime applicable to the effective medical treatment of mental illness. The texts did not regulate the framework within which individuals who were subject to a security measure were to be cared for in psychiatric hospitals, did not specify who was entitled to decide on the appropriate treatment and did not define the manner in which treatment was to be administered, particularly where a patient did not wish to accept the prescribed treatment. Furthermore, these texts did not indicate that it was possible to lodge an appeal against a doctor's decision regarding the medication to be administered. In those circumstances, the Court noted that the applicants did not have any remedy available whereby they could require a court to rule on the lawfulness, including the proportionality, of the forced administration of medication, or to have it discontinued.

Lastly, the Court noted that both of the applicants had been placed under guardianship. This raised questions as to the seriousness of their mental disorders and their capacity to give informed consent to the administration of the treatment which had been prescribed for them. However, it did not appear that the applicable legal provisions regulated the manner in which individuals' consent was obtained, or the procedure to be followed should such individuals refuse to undergo treatment.

In conclusion, the Court considered that even if the contested measure had a basis in Romanian law, the absence of sufficient safeguards against forced medication had deprived the applicants of the minimum degree of protection to which they were entitled in a democratic society. In such circumstances, the Court found that it could not be said that the interference in question had been “in accordance with the law” as required by Article 8 § 2 of the Convention. It followed that there had been a violation of Article 8 of the Convention.

Article 34

The Court was aware that the applicants were vulnerable individuals. However, the fact that guardianship proceedings had been instituted in respect of the applicants did not amount in this instance to a form of illegitimate and unacceptable pressure which hindered the right of individual petition. The Court concluded that the State had not breached its obligations under Article 34.

Article 38

Although the documents provided by the Government did not deal exhaustively with all of the proceedings to which the applicants had been parties, the Court considered that the incomplete nature of that information had not prevented it from examining the case. It concluded that the respondent State had not failed to fulfil its obligations under Article 38 of the Convention.

Just satisfaction (Article 41)

The Court held that Romania was to pay the applicants 16,300 euros (EUR) in respect of non-pecuniary damage and EUR 5,150 in respect of costs and expenses.

The judgment is available only in French.

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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.