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Communication from Romania concerning the case of N. v. Romania (Application No. 59152/08)

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Communication de la Roumanie concernant l'affaire N. c. Roumanie (Requête n° 59152/08)
(anglais uniquement)

DGI

29 OCT. 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Revised Action Plan

Case of N. v. Romania
(application no. 59152/08)

Judgment of 28 November 2017, final on 28 February 2018

I. Introductory case summary

This case concerns the applicant's psychiatric confinement imposed in 2001 as a security measure during criminal investigations; however, the Court's judgement only examined the applicant's deprivation of liberty after 2007 (as the complaints related to prior events had been lodged out of time).

The ECtHR found a violation of the applicant's right to liberty and safety given the:

- i. Absence of a legal basis for his deprivation of liberty (violation of Article 5 § 1)

In the Court's analysis, the domestic courts had failed to properly assess the danger the applicant posed to the society, an aspect which was essential for the lawfulness of the detention in domestic law; the domestic courts, basing their decisions to maintain the measure on forensic medical reports attesting that the applicant had a psychiatric condition, did not refer to violent behavior that would justify the continuation of the confinement.

Moreover, the ECtHR found that the applicant's deprivation of liberty since 2016 has been arbitrary; as of 2016, the domestic courts maintained this measure on a transitory basis to allow the social services to organize the applicant's transfer to an institution suited to his needs, in the absence of any legal provision enabling them to do so. Furthermore, the Court considered that a domestic judicial decision, delivered in February 2017 and replacing the measure of psychiatric confinement with that of mandatory treatment and ordering the applicant's release, remained unimplemented due to the authorities' failure to carry out a rigorous assessment of the applicant's specific needs and of the social welfare measures that were appropriate and to the lack of suitable reception facilities in Romania.

Quoting the United Nation Convention on the Rights of Persons with Disabilities, the Court also reiterated the principle that the existence of a disability shall in no case justify a deprivation of liberty.

- ii. Shortcomings in the proceedings for the judicial review of the applicant's deprivation of liberty (violation of Article 5 § 4)

The Court found that these proceedings had not afforded sufficient safeguards against arbitrariness, as the intervals at which the domestic courts had assessed the need to maintain the detention had not satisfied the requirement of speediness and the applicant had not had effective legal assistance; thus, as he had been represented by different lawyers in each set of proceedings and had not had the opportunity to speak to them before the hearings.

Under Article 46 of the Convention, the ECtHR indicated that the authorities should immediately implement the court decision of February 2017 ordering the applicant's release in conditions meeting his needs.

It further recommended that Romania envisage general measures to ensure that i) the confinement of individuals in psychiatric hospitals is lawful, justified and devoid of arbitrariness and ii) persons subjected to confinement safety measures have access to a judicial appeal accompanied by appropriate safeguards ensuring a prompt decision on the lawfulness of the detention.

I. Individual Measures

I.1. Just satisfaction

As for the payment of just satisfaction, the sums awarded to Mr. N. and his legal representative were paid in the modality chosen by Mr. N's legal guardianship (namely in a bank account on Mr. N.'s name) and by the legal representative, on 29 and 30 May 2018 respectively. For the delay of one day in paying the sum awarded to the applicant, the equivalent in RON of 2.71 EUR interest was paid; similarly, for the two-day delay in the payment of the sum awarded to his legal representative, the equivalent of 1.46 EUR interest was paid.

I.2. Individual measures as indicated by the Court - the implementation of the domestic court decision ordering the applicant's release in conditions meeting his needs.

I.2.1. Preparations and identification of an accommodation solution

After the delivery of the ECtHR judgment on 28 November 2017, the authorities began their demarches in order to comply with the individual measures indicated by the Court.

Therefore, on 8 December 2017, following a complex speciality evaluation, Mr. N. was delivered a certificate attesting his register as a person with disabilities; as a person with disabilities, Mr. N. was entitled to assistance for accommodation in a residential facility offering services to persons with disabilities. During the evaluation, Mr. N was informed on the types of social services he could benefit from once a housing solution, corresponding to his needs, was identified.

On 29 May 2018, after a complex evaluation of Mr. N. undergone by an interdisciplinary team within the competent county directorate for social assistance and child protection, composed of a psychiatric doctor, a psycho-therapist and a social assistant, it was proposed that Mr. N. benefit from a social protection measure within a residential facility, be it a recovery centre or a residence of maximal protection (*locuință maxim protejată*).

The Government underline that both options correspond fully to the recommendations made following the evaluation and those included in the evaluation performed by the Estuar Foundation, namely that Mr. N. needed assistance for part of the daily activities, permanent care and supervision in that daily administration of the medical treatment, and for those reasons he must be provided with a secure accommodation environment, encouragement for the community integration, caring and assistance for maintaining the personal hygiene, for the daily activities and for taking the medical treatment, rehabilitation and occupational therapies for the development of his functional autonomy. In fact, the recommendations made by the Estuar Foundation are similar with the standards established for the accommodation in a recovery centre.

The evaluation process comprised both a written phase, where the interdisciplinary team studied all the documents put at their disposal by the S Hospital (where Mr. N was previously confined as a safety measure) and the Mr. N's legal guardian, as well as a direct session of evaluation; these documents regarded the applicant's medical history, its present medical, psycho-social condition, the conclusions of the evaluation leading to the issue of the applicant's certificate attesting his register as a person with disabilities.

1.2.2. Information of the applicant on the solution identified

During the 29 May session of evaluation, Mr. N was informed of the proposal regarding the accommodation in a recovery centre and on the services offered (housing, medical assistance, care, recovery, neuro-psyhic rehabilitation, psychological consult, vocational therapy) and expressed his agreement; he was assisted by his legal guardian - a person designated within the local administrative entity, Mrs. T.E.C. - who was also informed in detail about the services offered by the recovery centre identified (namely the U Centre in Bucharest). Previously, Mr. N. had also been informed on the housing solution

identified, and was shown pictures and given details on the conditions provided by the U Centre, by the personnel of S hospital.

The decision to accommodate Mr. N in the U Centre was taken by the Commission for the evaluation of persons with disabilities within the Local Council of Bucharest, commission that comprises also a member representing the NGOs, namely a member of the Estuar Foundation.

Upon arrival, Mr. N. was also given a tour of the Centre, being informed on his rights and duties as a resident and on the facilities the Centre offers. It is to be noted that not only the legal guardian, but also Mr. N. in person was given a detail presentation on these issues; the presentation is also accessible to all interested persons on paper support available in a visible place. Mr. N. also has unhindered access to his personal file, where the administrative decision to award him the social service of residence in the U Centre is found; other persons, representing Mr. N. or upon his reference (*persoane de referință*) can access or request copies from the file, with due regard to the protection of personal data.

1.2.3. The accommodation regime in the U Centre

The U Centre is situated in the city of Bucharest, in the heart of the 6th District and has an open regime for persons with retained decisional ability and a semi-open regime for persons placed under guardianship, as Mr. N. The semi-open character refers to the fact that persons placed under guardianship are to be accompanied in the community by the Centre's personnel or reference persons or members of the family, upon request, be it oral or written, of the resident or the said persons. The residents can request to be accompanied in the community in order to relax, to take care of personal issues (acquisition of goods, contact with public institution for solving aspects of legal or social nature, medical appointments), to visit and meet family members and reference persons. The psychiatrist monitoring their medical condition is consulted on whether a resident can leave the centre at that particular moment and if they need to be accompanied.

The residents have access to care services, permanent medical assistance, support, therapeutic and vocational activities, taking place within the Centre or in the community, educational and social services.

There are yearly and monthly programmes of individual or group activities taking place in the vicinity and origin socio-community environments, all these activities aiming at preparing the residents for community integration.

Mr. N. is encouraged and supported in leaving the centre in order to establish communication and relations within the community, and is accompanied in the community by a caretaker from the U Centre. He was informed on this

possibility, that he can leave the centre upon request and accompanied by a person he agrees on.

Mr. N. left the centre on 6 occasions for relaxing and socialising activities and refused to participate in 2 such collective activities; he also paid visits to doctors (on 5 occasions), to the maximal protection residence managed by Estuar Foundation and went shopping (for a TV set, TV and internet accessories).

The applicant can also connect to reference persons and other persons of interest and communicate on his own mobile phone or using the mobile phone of the Centre.

The measures of safety deployed by the Centre aim exclusively at preventing accidents and at preserving the personal security of the residents. The protection and guarding services for the U Centre are mandatory according to the law, as all units of the local public administration are bound to ensure this protection for all buildings. In fact, all locations of the Directorate General for Social Assistance are provided with such services, which do not relate to the fact that the Centre is a residential unit.

The centre offers Mr. N the following range of services: i. care and functional rehabilitation, aimed at maintaining the personal hygiene, managing personal belonging, cleaning of the accommodation spaces; ii. Medical assistance, through daily administration of medication prescribed, unlimited access to medical consults, information on the medication prescribed, periodic medical analysis; iii. Psychological and psycho-therapeutic programs; iv. Social assistance and community integration, through information on the daily activities and on the activities proposed to him, socialising in the community.

At present, Mr. N. is involved in a counselling process, as he expressed the wish to be transferred to a maximal protection house.

It is to be underlined that, in accordance with the safety and care standards, the Centre ensures that the staff number equals the residents' number.

1.2.4. The continuous demarches of the authorities to ensure the applicant's integration in the community

Apart from the activities developed within the Centre and aiming at increasing the residents' autonomy and their implication and integration in the community, the local authorities continue their cooperation with non-governmental entities for the identification of an adequate housing solution in a maximal protection house for Mr. N.

Upon the authorities' request, the *Estuar* Foundation indicated their intention to offer the benefit of such an accommodation to Mr. N., indicating also the costs that were to be borne by the authorities. Still, the local authorities found that the solution proposed by the foundation was not feasible at that moment, as there was no personnel to provide non-stop care for the applicant; the authorities examined the possibility to deploy some personnel from the U Centre to the maximal protection house, but this option proved unfeasible as it would affect the safety and care of the other residents.

It is also to be underlined that, as a public authority, the local Directorate General for Social Assistance must respect and apply the general provisions on the acquisition of services; in these circumstances, generated on one hand by the state of the maximal protection house of *Estuar* Foundation, on the other hand by the need to respect the schedule for a public acquisition of services, the local authorities adopted the decision to offer to the applicant accommodation in the U Centre.

Still, they pursued the acquisition of social services including accommodation and on the 18th of June 2018, a contract was concluded between the local authorities and *Estuar* Foundation; in accordance with the documentation submitted, the said foundation assumes the commitment to public the vacancy for surveillance and care personnel in order to be able to provide the services under contract with the respect for minimal quality standards.

On 5 September, Mr. N visited the maximal protection house and expressed his wish to be transferred there.

Most recently on 8 September 2018, the Foundation informed the local authorities that the aspects relating to ensuring the necessary staff for the maximal protection house were not yet solved and undertook to contact the local authorities as soon as the situation is clarified.

At the same time, the local authorities are also developing other programmes for the establishment of maximal protected houses; one such programme was approved on June 2018 by the local Council, with the houses included being refurbished and rearranged at present. The Directorate General for Social Assistance also presented two projects within two programmes of national interest with the aim to support the deinstitutionalisation process, prevent the institutionalisation and sustain the transition of young adults from the child protection system to that for the protection of persons of disabilities. These two projects propose the acquisition, refurbishment, arrangement (including for accessibility purposes) of 4 such houses.

1.2.5. The guardianship of the applicant and his possibilities to protect his interests and rights

On 27 August, Mr. N. requested to the local authorities to re-examine his register as a person with disabilities and his invalidity pension. His legal guardian supported his request and the U Centre undertook to provide all the help to the applicant for the completion of his file, in support of his request. In September, the applicant decided to redraw his request and notified accordingly the authorities. As such, and in accordance with his will, the applicant kept his current degree of disability as mentioned in his registration as a person with disabilities and the level of his invalidity pension.

As his legal guardian is domiciled in Buzau, and this aspect can potentially affect the exercise of the guardianship, she informed us on the acceptance expressed by Mr. B.V., working in the U Centre, to assume the guardian of the applicant. The request for the appointment of a new guardian will be examined by a court.

It is apparent from the information provided above that Mr. N. was informed of the decision adopted to provide him social services, including accommodation, within the U Centre and that he is capable of contesting such a measure should he find it detrimental to his interests.

The decision on the placement in a social residential facility is taken by the Commission for the evaluation of adult persons with disabilities (an structure functioning within the county Council) only in cases where the particulars of the individual's condition makes it impossible for the adequate protection and care to be provided, in an integrated manner, at the person's home or within the community.

The placement in a residential facility, that has a built-in system for the supply of social services, together with the medical, educational, training ones, is a revisable decision, as during the placement, periodical complex re-evaluations are performed, in order to identify and quantify the progress on all components achieved by the person. Order no. 67/2015 on approving minimal quality standards in residential facilities stipulates that the revision is the evaluation is done yearly or whenever the situation requires it.

After each such re-evaluation, the individual intervention plan is revised, after the consultation of the person concerned, in order to include, in accordance with the progress achieved, the measures that are relevant for maximizing the autonomy and the professional skills of the person, as well as her health well-being.

The person concerned is informed of the conclusions of each evaluation and consulted on the measures proposed, her preferences and needs.

The certificate on the classification and the disability degree, as well as the individual program for rehabilitation and social integration are both administrative acts and can be thus contested before the administrative sections of national tribunals. Starting with the adoption of Emergency Ordinance no. 51/2017, the certificate for classification, the certificate for

professional orientation and the Individual Plan can be directly contested before domestic courts, in accordance with the law on administrative disputes.

Mr. N. has already availed himself of the legal venues, as he requested a re-evaluation of his register as a person with disabilities. Should he consider that the decision on his placement in a residential facility does not correspond to his interests, he could either contest it himself, either request a reference person to initiate such a complaint. In case the applicant considers that a contrariety of interests emerged between him and his legal guardian (e.g. should the legal guardian not support his complaint), he could present this aspect to the court, in order for a special trustee be appointed to represent his interests, in accordance with the provisions of article 150 from the Civil Code.

II. General measures

II.1. General awareness measures

The judgment has been translated and is available on the website of the Superior Council of the Magistracy ("CSM"). Moreover, the Superior Council was requested to disseminate it to all domestic courts.

The judgment was further disseminated to the National Centre for Mental Health, the National Authority for Persons with Disabilities, the National Bars' Union and the National Forensic Institute.

II.2. Regarding the violation of Article 5

II.2.1. Origins of the violation

Upon evaluation of the origins of the violations of the right to liberty and safety, the Government consider that these causes stemmed out of several interconnected aspects:

- The failure of the domestic courts to properly assess the danger the applicant posed to the society, an aspect which was essential for the lawfulness of the detention in domestic law;
- the absence of any legal provision allowing for the applicant's deprivation of liberty pending the organization of the applicant's transfer to an institution suited to his needs
- the non-implementation of the judicial decision replacing the applicant's psychiatric confinement due to the authorities' failure to carry out a rigorous assessment of the applicant's specific needs and of the social welfare measures that were appropriate and to the lack of suitable reception facilities in Romania;

- the lack of sufficient safeguards (the requirement of speediness, effective legal assistance) against arbitrariness in the judicial review of the applicant's deprivation of liberty.

A preliminary assessment of these elements indicates that the majority of these violations do not find their origin in the provisions of the law, but in their implementation.

More information is awaited on the proscribed and practical reaction of the social welfare system in cases similar to the applicant's and on the extent of availability of reception facilities that are equipped to properly accommodate persons in situations similar to the applicant's.

The Government are aware that the Court recommended they should adopt general measures to ensure that the confinement of individuals in psychiatric hospitals is lawful, justified and devoid of arbitrariness and that these individuals have access to a judicial appeal accompanied by appropriate safeguards ensuring a prompt decision on the lawfulness of the detention.

Still, the Government recall that in accordance with the Criminal Code and the Criminal Procedure Code, the safety measure of admission into a medical facility is regulated, with the aim to overcome a state of danger and preventing the commission of acts provided in criminal law. This measure should only remain in force until the detained person has made a full recovery or until his condition has improved to the extent that he no longer poses a danger to society. The necessity of maintaining the measure is verified, ex officio, by the delegated judge from the court of the district in which the medical facility is located, at least once a year. Moreover, the lifting of the measure can be requested by the confined person or by the prosecutor. If the person does not have a lawyer of his choosing, a lawyer shall be officially appointed to represent him.

The medical facility where the person is confined has the legal obligation to notify the court of the district in which the facility is located where the detention is no longer necessary.

In its judgment, the Court did not express concern on the provisions in the domestic law, but referred exclusively to their implementation in the applicant's case. Therefore, the Government consider that the violations of Article 5 in connection to the judicial review proceedings do not have their origin in the law and the execution measures will be of an administrative and practical type.

II.2.2. Measures taken and envisaged to remedy the causes of the violations

The domestic courts were notified on the need to respect the deadlines set in the criminal procedure Code with respect to the judicial review of the safety measure of confinement and their attention was drawn to the analysis performed by the Court regarding the proper assessment of the danger the person subjected to such a measure poses on the society.

Relevant practice was requested from the domestic courts, together with a presentation of circumstances that might affect their ability to timely and effectively review the safety measure.

The National Forensic Institute was also notified of the judgment, underling the essential character for any effective evaluation of current medical information on the patient's condition, and requested to submit data, including statistical ones if available, on the respect for the deadlines set in the legislation for the transmission of forensic evaluation to the courts within the judicial review exercise.

Also, the Bars' Union was requested to indicate the measures taken or envisaged to overcome the shortcomings identified by the Court and to ensure that court appointed lawyers are properly trained and also supported by administrative measures in order to provide an effective legal assistance.

The National Centre for Mental Health and the National Authority for Persons with Disabilities were required information on the legal framework and on the actual functioning of the social welfare system in cases similar to that of the applicant.

Upon receipt of all the information, a further evaluation can be performed; the Government will inform the Committee of Ministers on these conclusions, at the latest by the end of February 2019.

III. Conclusions

The Government consider that the domestic authorities have taken effective and adequate steps to speedily implement the court decision of February 2017 ordering the applicant's release in conditions meeting his needs.

As for the general measures, the Government undertake to provide the Committee with further information on the basis of the above mentioned considerations and in the timeframe indicated.