

RIGHTS OF PERSONS WITH MENTAL HEALTH ISSUES OR PHYSICAL DISABILITIES



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RIGHTS OF PERSONS WITH MENTAL HEALTH ISSUES OR PHYSICAL DISABILITY

These summaries are made under the sole responsibility of the Department for the Execution of Judgments of the European Court and in no way bind the Committee of Ministers.

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The Council of Europe promotes, protects and monitors the implementation of human rights for all, including persons with disabilities. Persons with disabilities are entitled to have access to and enjoy, on an equal basis with others, the full range of human rights protected by the European Convention on Human Rights, the European Social Charter, the United Nations Convention on the Rights of Persons with Disabilities and other international treaties.¹

The European Court of Human Rights has enshrined the rights of persons with disabilities in its case-law through a dynamic and evolutive interpretation of the European Convention in the light of the provisions of the United Nations Convention on the Rights of Persons with Disabilities and its fundamental principles of independence, freedom of choice, full and effective participation and inclusion in society, equality of opportunity and human dignity of persons with disabilities.²

The European Convention on Human Rights in its interpretation by the Court and other Council of Europe texts, such as the European Social Charter,³ as well as the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT),⁴ and the recommendations of the Committee of Ministers,⁵ play an important role in encouraging and supporting member states to implement the necessary measures and changes to protect the rights of persons with disabilities.

The present factsheet provides examples of measures reported by states in the context of the execution of the European Court's judgments concerning rights of persons with disabilities.

¹ *Human Rights: a reality for all*, Council of Europe Disability Strategy 2017-2013.

² *Convention on the Rights of Persons with Disabilities*, adopted on 12 December 2006, Sixty-first session of the UN General Assembly, Resolution A/RES/61/106.

³ The European Social Charter contains specific rights for persons with disabilities, in particular Article 15 (right of persons with disabilities to independence, social integration and participation in the life of the community).

⁴ See <https://www.coe.int/en/web/cpt/standards>

⁵ *Recommendation Rec(2006)5* of the Committee of Ministers to member states on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015.

1. Freedom from torture, inhuman or degrading treatment or punishment

a. Conditions of detention

Secure appropriate conditions of detention and adequate medical treatment for prisoners with mental disorder

The Court found that the cumulative effects of the entirely inappropriate conditions of detention and the lack of timely and adequate medical treatment to which the applicants were subjected, in light of their serious health conditions, amounted to ill-treatment.

The Law "On the Rights and Treatment of Prisoners and Detainees" was amended in 2014 and regulates various aspects of medical treatment for individuals deprived of liberty, including diagnosis, services, and the supply of medicines and medical equipment. It also ensures the inclusion of prisoners in the compulsory health insurance scheme, guaranteeing free access to medical services for all detainees. Procedures for the provision of medical care were improved to ensure adequate treatment. Prisoners with mental health disorders receive a special treatment in accordance with the Mental Health Law of 2012, which outlines the organisation of medical care, particularly in specialized medical institutions. Remedies including judicial review and monitoring by the Ombudsperson have been introduced.

ALB / *Dybëku group*
(41153/06)

Judgment final on 02/06/2008

Final Resolution
CM/ResDH(2016)273

Appropriate institutions for the detention of mental health patients

In this case, the Court held that the Zenica Prison Forensic Psychiatric Annex was not an appropriate institution for the detention of patients with mental health disorders. In this regard, the CPT noted in 2007 that the physical conditions in the Psychiatric Annex remained wholly unacceptable for a health care institution.

In response to the Court's findings, the Sokolac Forensic Psychiatry Institution was opened in 2016, and the gradual transfer of mental health patients from all inappropriate institutions began.

BIH / *Hadžić and Suljić*
(39446/06+)

Judgment final on 07/09/2011

Final Resolution
CM/ResDH(2018)114

Improved conditions of detention and care for detainees with disabilities

In response to the Court's finding of a violation of the prohibition of inhuman and degrading treatment due to detention facilities unsuited for severely disabled prisoners in wheelchair, a cell management system was introduced for the detention of disabled persons, with a constantly updated map of existing places and specific needs in order to best align penal, penitentiary and health requirements. Under the Law of 11 February 2005, public buildings accommodating people should be adapted to all forms of disability by 2015. A programme was launched to build 13 200 additional places in the penitentiary system, including 1% of cells adapted for disabled persons. A joint decree by the Ministry of Equipment and Justice laid down accessibility rules for prisons and future constructions.

Two directives of 2010 specified the accessibility requirements for disabled detainees in penitentiary facilities. In 2014, a new law created two measures: medical release and parole for medical reasons. In this context, a project was initiated in 2015 to identify and manage detainees' loss of autonomy linked to advanced age or disability, in order to facilitate the

FRA / *Vincent* (6253/03)

Judgment final on 26/03/2007

Final Resolution
CM/ResDH(2009)79

FRA / *Helhal* (10401/12)

Judgment final on 19/05/2015

Final Resolution
CM/ResDH(2017)260

reduction of their sentence, their release for medical reasons, or the improvement of their detention conditions.

Independent access to prison facilities for paraplegic prisoners

In this case, the Court found that the inadequacy of the applicant's prison conditions amounted to ill-treatment, taking into account his physical disability and, in particular, his inability to independently access various prison facilities, including sanitary facilities.

In response, several places of deprivation of liberty underwent major repair and renovation works in 2014 to ensure adequate prison facilities for inmates with disabilities, in particular for those in wheelchairs.

LVA / *Grimailovs* (6087/03)

Judgment final on 25/09/2013

Final Resolution
CM/ResDH(2018)382

Safer detention and treatment of disabled persons in police custody

In response to the Court's judgment which found that the disabled applicant in a wheelchair had been subjected to degrading treatment in custody, new guidance was issued in 2006 and subsequently enshrined in the Equality Act 2010. According to this act, the police must make reasonable adjustments at police stations to allow for the needs of disabled persons held in custody. The Commission for Equality and Human Rights has power to investigate breaches of the Equality Act, and to provide assistance to individuals in legal proceedings to establish whether rights under this act have been violated.

UK / *Price* (33394/96)

Judgment final on 10/01/2001

Final Resolution
CM/ResDH(2011)286

b. Living conditions in social care homes or psychiatric institutions

Improvement of the living conditions and protection of children in public care

Numerous children with severe mental disorders placed in a social care home died in 1996-1997, and the European Court pointed out the responsibility of the Bulgarian authorities who had failed to take practical and sufficient measures to prevent these deaths, despite having specific prior knowledge of the real danger for these children.

Following the Court's judgment, the material living conditions of children with disabilities in public care have been considerably improved following the closure of the former social care homes and their placement in foster families or new family-type residential centres. Several domestic bodies monitor the care provided in such institutions, in particular the Agency for Quality of Social Services created by the 2019 Social Services Act, which entered into force in 2020. This law aims to assist biological families in order to prevent the abandonment of children with disabilities and to reduce recourse to residential care.

BGR / *Nencheva and Others*
(48609/06)

Judgment final on 18/09/2013

Status of execution:
[pending](#)

Increased protection against ill-treatment in psychiatric hospitals – Participation and effective legal representation of persons with mental health issues in involuntary placement proceedings

In these cases, the applicant's right to liberty and security was violated on account of the failure of the authorities to ensure their participation and effective legal representation in the proceedings concerning their compulsory confinement in psychiatric hospitals. In the *M.S. (No. 2)* case, the Court's found that the unnecessary physical restraint for 15 hours of the applicant amounted to ill-treatment.

In response to the Court's judgments, the Protection of Individuals with Mental Disorders Act entered into force in 2015. It introduced strict time limits for psychiatric hospitals to examine allegations of ill-treatment raised by persons with mental disorders subject to involuntary

CRO / *M.S. (No. 2) group*
(75450/12)

Judgment final on 19/05/2015

Final Resolution
CM/ResDH(2020)310

placement. It also introduced the right for persons with mental disorders to be informed of the reasons and purpose of their involuntary admission as well as of the proposed medical treatment. The persons concerned, and their legal representatives must be present at the hearings concerning involuntary confinement.

In addition, in 2015 the Ministry of Health adopted an Ordinance on types of compulsory measures in psychiatric institutions and the conditions for their application. It severely restricted the use of compulsory measures only to specific cases and provides detailed instructions on how to apply them as a matter of last resort.

Stricter regulation of the use of restraint measures on mentally ill persons

While the Court accepted that the initial decision to strap the applicant, a man suffering from paranoid schizophrenia, to a restraint bed was justified considering the danger he represented to the staff and other patients of the hospital, it considered the continuation and duration of the restraint measure (nearly 23 hours) as not strictly necessary and not respectful of his human dignity.

In response, the Mental Health Act has been modified in 2022, introducing specific time intervals between the three reviews of patients who are submitted to compulsory restraints by the doctor, and a duty for the permanent guard to make on-going written descriptions of the state of patients submitted to compulsory restraints at least every 15 minutes. The three reviews per 24 hours are minimum requirements and the patient will be released as soon as the compulsory restraint is no longer necessary.

DNK / *Aggerholm*
(45439/18)

Judgment final on 15/12/2020

Status of execution: [pending](#)

Ensuring appropriate placement and care of children with mental disabilities

The violation in this case stemmed from the inappropriate placement of an eight-year-old child with mental disability in a state institution for physically disabled people, which was inadequate for his needs, leading to inhuman and degrading treatment aggravated by the fact that he was tied to his bed at night and often during the day.

Following the Court's judgment, the National Deinstitutionalisation Strategy 2018-2027 was adopted to support inclusion of persons with disabilities as equal and active citizens of their communities and the society at large. In 2019, a new Social Protection Act was adopted introducing the possibility of supported living in a special residential community as a non-family care mechanism designed, *inter alia*, for persons with disabilities. Conditions in the residential community and the care provided are detailed in the *Rulebook on the manner and scope of social services, norms and standards for providing the social service living with support*.

MKD / *L.R.* (38067/15)

Judgment final on 23/05/2020

Final Resolution
CM/ResDH(2021)402

2. Lawfulness of detention and placement

Remedies for disabled persons deprived of legal capacity to challenge their placement in social care homes

The applicant was suffering from alcoholic dementia, a permanent mental disability, and was represented by a guardian on account of his inability to perform any legal acts on his own. The Court considered that the applicant was confined to a social care home with his guardian's consent without adequate guarantees against arbitrariness, and that there were no proceedings available in which he could have effectively challenged the lawfulness of his detention and seek compensation.

Ahead of the Court's judgment, an amendment to the Act on Social Services and the Act on Special Court Proceedings was adopted and entered into force in August 2016. This amendment

CZE / *Červenka* (62507/12)

Judgment final on 13/01/2017

Final Resolution
CM/ResDH(2019)273

set out the conditions under which a guardian of a person restricted in legal capacity can resort to the placement in a social care institution in accordance with the principle of necessity and subsidiarity. It also provides for judicial review of the placement that can be initiated by the person concerned or anyone else. In addition, prosecutor's offices are now authorised to enter any social care institution, talk in private with any patient of the institution, and have access to all relevant documentation to ascertain whether the conditions for initiating judicial review are met. In January 2019, the Ministry of Labour and Social Affairs published methodological guidance for providers of social care services and public guardians to ensure correct implementation of the new legislation. It is worth noting that the new Civil Code of 2012 strengthened the legal status of persons suffering from mental illness by providing for a larger array of support measures for these persons and defining restrictions to legal capacity as a measure of last resort.

Possibility of individualised incapacitation limited to certain areas and improved remedies for mentally handicapped persons to challenge detention and seek restoration of legal capacity

The Court found in these cases that the applicants had been deprived of a fair, practical and effective opportunity to participate in their incapacitation proceedings, ask for restoration of legal capacity or separate legal representation, and challenge their involuntary confinement, with serious consequences on their private and family life.

The Civil Code, the Code of Civil Procedure and the Law on the State Guaranteed Legal Aid were amended in 2016 to enable courts to order individualised measures and declare a person suffering from mental disorders legally incapacitated only in certain areas of his/her life, and to oblige the courts to restore legal capacity if the person's health improves, so that full incapacitation can only be used as *ultima ratio*.

The restoration of legal capacity can be requested once a year by a close relative, a care institution, a prosecutor, but also by the incapacitated person himself/herself. Incapacitated Persons' Review Commissions were established in every municipality and can also request the lifting of the incapacitation. The amended Civil Code also provides a possibility to appeal against acts of the guardian and to initiate proceedings to dismiss him from his office.

LIT / *D.D.* (13469/06)

Judgment final on 09/07/2012

[Final Resolution
CM/ResDH\(2020\)267](#)

LIT / *A.N.* (17280/08)

Judgment final on 31/08/2016

[Final Resolution
CM/ResDH\(2017\)268](#)

Introduction of merely partial restriction of legal capacity to protect the right to choose one's place of residence

The applicant was divested of his legal capacity and admitted to a social care centre against his will, without objective medical opinion to justify his detention nor any possibility to challenge it before domestic courts. The Court held that the lack of a proper medical assessment was sufficient to conclude that the applicant had been unlawfully deprived of his liberty.

According to the Law on the Social Services and Social Assistance, which entered into force after the applicant's admission, the placement and stay in long-term social institutions is based on the voluntary principle and on a contract between the person and the institution. An assessment of the necessity to place a person in such institution shall be carried out. A person may request to leave the long-term social care and assistance institutions at any time. The relevant procedure has been simplified in 2012 and local municipalities are obliged to ensure a place of residence to persons leaving institutions and unable to return to their previous place of residence. In 2013, new provisions on the restriction of a person's legal capacity entered into force, introducing partial restriction of legal capacity and thus enabling persons concerned to challenge such restriction themselves and to defend their related rights and legitimate interests, also regarding the guardianship relation, before domestic authorities and courts.

LVA / *Mihailovs* (35939/10)

Judgment final on 22/04/2013

[Final Resolution
CM/ResDH\(2018\)286](#)

Ensuring judicial review of decisions on placement in social care homes as well as direct access to a court against incapacitation decisions

POL / *Kędzior* (67149/01)

Judgment final on 16/01/2013

Final Resolution
CM/ResDH(2018)228

In this case, the Court considered the absence of any review of the lawfulness of the placement and detention of the applicant, suffering from a mental disorder, in a care unit as contrary to his right to a remedy to challenge the legality of his detention as guaranteed under the Convention (Article 5§4). It also considered that he was denied direct access to a court and thus could not apply for his legal capacity to be restored.

Following the Court's judgment, the Mental Health Protection Act was amended with effect from 1 January 2018. It provides for an obligation to periodically examine the mental health state of a person admitted to a social care home in terms of the justification of the person's stay. Such examination should be carried out at least every six months. In addition, legally incapacitated persons have a right to appeal against the decision admitting them to a social care home. The Code of Civil Procedure was amended in 2007 and provides that "an application to have a legal incapacitation order quashed or changed may also be lodged by the incapacitated person".

Procedural safeguards for detention of legally incapacitated persons with mental disorders

UK / *H.L.* (45508/99)

Judgment final on 05/01/2005

Final Resolution
CM/ResDH(2014)133

In the absence of procedural safeguards and limits, the placement of the applicant as an "informal patient" (i.e. receiving in-patient psychiatric care but treated without resort to legal compulsory powers, see § 52 of the judgment) in a psychiatric hospital amounted to unlawful detention as he was under continuous supervision and control and not free to leave.

A consultation document addressing these problems (known as the "the Bournemouth gap") was issued by the Department of Health in 2005 to set up proposals for appropriate safeguards to avoid similar violations. According to this document, the power to deprive a person of liberty would be exercisable by specified persons or bodies, in defined circumstances, on the basis of objective medical evidence. It would incorporate guarantees such as requirements to specify the reason for deprivation of liberty, limits on the length of time, involvement of relatives, carers and advocates, provision for regular reviews and access to court for review of the lawfulness of detention.

Such safeguards were introduced in England and Wales through the adoption of the Mental Health Act 2007, supplemented by a dedicated Deprivation of Liberty Safeguards Code of Practice. In Northern Ireland, the Department of Health, Social Services and Public Safety issued a guidance to health and social care practitioners on making decisions about an individual's care or treatment that may lead to a deprivation of liberty. It explains the effect of the Court's judgment and the need for systems to assess whether proposed care arrangements amount to a deprivation of liberty. The Guidance also sets out elements of good practice regarding the consideration of alternatives to a deprivation of liberty as well as the need, in certain situations where no alternatives are available, to consider the use of formalised detention under mental health laws.

Introduction of effective possibilities for disabled persons to challenge the lawfulness of their detention in hospital for medical assessment

UK / *M.H.* (11577/06)

Judgment final on 22/01/2014

Final Resolution
CM/ResDH(2015)53

The applicant was a woman severely disabled as a result of Down's Syndrome, who was admitted to hospital under the Mental Health Act 1983 for a twenty-eight days period of detention for assessment. The Court considered that the right to apply to the Mental Health Review Tribunal for discharge during the first fourteen days of detention could be considered as compliant with Article 5§4 of the Convention if the concerned person had legal capacity. However, in the case of the applicant, this remedy was found by the Court to be not available in practice since the applicant lacked legal capacity.

In England and Wales, the 1983 Act has been substantially amended by the Mental Health Act 2007, introducing provisions on independent mental health advocates (IMHA) who offer patients advice as to how the 1983 Act applies to them and give them an idea about what rights they have. It is now a duty upon local authorities to make arrangements to enable IMHAs to be available to help any patient liable to be detained under the 1983 Act. Regarding patients without legal capacity, according to the amended Code of Practice Mental Health Act 1983, an IMHA should be introduced to the patient so that the IMHA can explain what help can be provided.

In Wales, the Mental Health Act Code of Practice specifies that hospital managers should always consider a referral to the Tribunal for someone in the applicant's circumstances, lacking capacity, and where otherwise necessary.

In Scotland, detention in hospital for treatment for mental disorder is possible for twenty-eight days. Any patient can apply to the Mental Health Tribunal for Scotland for revocation of the short-term detention certificate.

Judicial review of compulsory medical treatment in criminal proceedings/of persons found to be criminally irresponsible

In this case, the Court reiterated that according to Article 5§4 of the Convention, a patient compulsorily detained for psychiatric treatment must have the right to seek judicial review on his or her own motion. The Court also stressed that "the detainee's access to the judge should not depend on the good will of the detaining authority, activated at the discretion of the medical corps or the hospital administration", and concluded that the applicant "was not entitled to take proceedings to test the lawfulness of his continued detention for compulsory medical treatment by a court" (§§ 44, 46 of the judgment).

In 2017, amendments to the Law on Psychiatric Care changed the procedures for ending compulsory medical treatment in criminal cases. The justification of the involuntary hospitalisation is reviewed by a judge at least every six months. A prosecutor supervises compliance with psychiatric care laws. The patient, the defence counsel, or representative can appeal decisions on compulsory treatment and request alternative psychiatric evaluations. The amended Code of Criminal Procedure requires the participation of the person in court hearings regarding their compulsory treatment, a requirement also outlined in the 2017 "Rules of Compulsory Measures of a Medical Nature in a Special Institution for Psychiatric Care" by the Ministry of Health".

UKR / *Gorshkov* (67531/01)
Judgment final on 08/02/2006

Final Resolution
CM/ResDH(2020)195

3. Equal recognition before the law and legal capacity

Access to court for incapable persons to seek restoration of their legal capacity

The violations of the applicant's right to a fair trial and to respect for his private life in this case arose from the lack of direct access to court for a person deprived of legal capacity without the necessary safeguards as well as from the absence, in Armenian Law, of the possibility of a tailor-made response in deprivation of legal capacity proceedings, which distinguished only between full capacity and full incapacity. The Court reiterated that the existence of a mental disorder, even a serious one, cannot not be the sole reason to justify full deprivation of legal capacity. Moreover, it was based on one single psychiatric expert opinion, which was not sufficiently recent.

ARM / *Nikolyan* (74438/14)
Judgment final on 03/01/2020

Status of execution: [pending](#)

This case is still under supervision of the Committee of Ministers of the Council of Europe, but significant steps forward can be mentioned. The Law on the Rights of People with Disabilities has been adopted on 5 May 2021 in the framework of the Complex Programme for social inclusion of people with disabilities for 2017-2021. It defines the main principles of the state policy on ensuring, promoting and protecting the rights of persons with disabilities. In addition, the newly adopted Code of Civil Procedure prescribes the right of those declared as legally incapable to seek restoration of legal capacity in court.

Introduction of procedural safeguards in proceedings divesting disabled people of legal capacity and limitation of the possibilities to initiate such proceedings

In *X. and Y.*, the domestic authorities failed to inform the first applicant of the proceedings concerning her legal capacity, and disregarded the legally valid power of attorney authorizing the second applicant to represent the first applicant (Article 6§1). The Court also found a violation of Article 8 on account of the domestic authorities' failure to make use of possible less intrusive measures than legal incapacitation (first applicant), and the initiation of incapacitation proceedings against the second applicant in the absence of convincing evidence showing that she was unable to care for her interest. In *Ivinović*, the Court held that the decision to partially divest the applicant of legal capacity due to health problems and incurred debt had not been validly reasoned (Article 8).

Following the Court's judgments, the new 2015 Family Act was adopted to limit the possibilities to initiate incapacitation proceedings. In the context of the protection of disabled people, decisions on full/partial divestiture of legal capacity are last resort measures subject to judicial review and priority must be given to less intrusive measures. The Ministry of Demographics, Family, Youth and Social Policy issued an instruction to the Social Welfare Centre (SWC) as to the relevance of evidence, proportionality tests, personal contact and examination by an expert, as well as representation in incapacitation proceedings.

When the deprivation of legal capacity is requested by the SWC, the appointed guardian cannot be an employee of that institution. To ensure independent representation of disabled adults, the Centre of Special Guardianship was established.

CRO / *X and Y* (5193/09)

Judgment final on 03/02/2012

[Final Resolution
CM/ResDH\(2018\)117](#)

CRO / *Ivinović* (13006/13)

Judgment final on 18/12/2014

[Final Resolution
CM/ResDH\(2018\)80](#)

Reimbursement of costs and expenses in proceedings before the Constitutional Court

The applicant was divested from his legal capacity on the basis of his mental disability. He made a successful claim before the Constitutional Court which quashed the civil court's decision divesting him of his legal capacity. However, the Constitutional Court dismissed his claim for reimbursement of costs based on a legal provision providing that each participant in proceedings before the Constitutional Court has to bear its own costs unless the court decides otherwise. The European Court considered this as a disproportionate restriction of access to court since the Constitutional Court failed to provide any meaningful reason for its decision to dismiss the claim, in particular in view of the applicant's mental and financial vulnerability.

In 2022, the Constitutional Court aligned its case-law and now provides detailed reasons for its decisions on costs and expenses, in consideration of the specific circumstances of each case, its significance for the complainants and their financial situation. The Constitutional Court requests the complainants to submit arguments and evidence supporting their claims.

CRO / *Dragan Kovačević*
(49281/15)

Judgment final on 12/08/2022

[Final Resolution
CM/ResDH\(2023\)169](#)

New legal framework for adequate support and protection of mentally disabled people

In these cases, the Court found that the only form of protection available in domestic law for vulnerable adults (guardianship) entailed legal incapacitation and made the protected persons dependent on their legal guardians, to whom the courts transferred the exercise of the former's

ROM / *Centre for legal
resources on behalf of
Valentin Câmpăanu*
(47848/08)

rights. Domestic law thus did not allow for a proportionate, tailor-made response to the person's circumstances. In *Valentin Câmpeanu*, the Court found serious shortcomings in the social and medical care afforded to a young man of Roma origin, orphaned, HIV-positive and with "severe intellectual disability" before his death at the neuropsychiatric hospital of Poiana Mare in 2004.

In 2020, the Constitutional Court ruled that the guardianship system for vulnerable adults infringed human dignity and was therefore unconstitutional. A new system of support and protection came into force on 18 August 2022 offering three gradual measures: the first maintains full legal capacity with support in decision-making by a notary, while the other two involve limitations on legal capacity according to the degree of autonomy and the specific needs of the person. The protected person can request the public notary or the courts to lift the measure applied at any time, and the provision of legal assistance during proceedings is mandatory.

Under the new system, the courts must re-assess the situation of people placed under guardianship under the former legislation and lift that measure or replace it with one of the new measures available. Such re-assessment must be completed by 18 August 2025, with adequate training to judges and prosecutors on the new forms of protection.

In May 2024, the Romanian Government adopted a national action plan for the execution of the European Court's judgments to rectify the serious deficiencies in the mental health care system and the shortcomings regarding the treatment of persons with mental health conditions and/or intellectual disabilities, to be implemented over the period 2024-2029. The implementation of this action plan will be assessed and supervised by the Committee of Ministers.

Judgment final on 17/07/2014

ROM / N. (No. 2) (38048/18)
Judgment final on 16/02/2022

Status of execution:
[pending](#)

Period during which incapacitated adults can be prevented from claiming restoration of their legal capacity reduced to maximum one year

In its judgment, the Court held that the three-year prohibition for claiming restitution of full legal capacity was disproportionate and unnecessary in a democratic society and thus entailed a violation of the private life of those concerned.

Section 186 (3) of the Code of Civil Procedure was amended in October 2004 so that the period during which a person can be prevented from claiming restoration of her legal capacity was reduced to a maximum of one year.

SVK / Berkova (67149/01)

Judgment final on 24/06/2009

Final Resolution
CM/ResDH(2012)59

Access to court for people with a mental illness to obtain restoration of legal capacity

On account of the general unavailability of direct access to a court by incapacitated people, and the absence of procedural safeguards providing for the review of the matter of restoration of legal capacity at reasonable intervals, the Court found that the inability of mentally-ill people to directly seek restoration of their legal capacity amounted to a denial of access to court, which could not be justified by the legitimate aims underpinning these limitations.

The Code of Civil Procedure was amended in 2017 to provide incapacitated persons with direct access to courts to request the restoration of their legal capacity. In addition, the term of validity of judicial decisions declaring a person incapacitated cannot exceed two years.

UKR / Nataliya Mikhaylenko
(49069/11)

Judgment final on 30/08/2013

Final Resolution
CM/ResDH(2019)324

4. Private and family life

Adequate protection of disabled people and their relatives against harassment

The Police and Social welfare authorities failed to provide adequate protection to a person divested of legal capacity owing to his mental and physical disability against the degrading treatment suffered on account of the harassment by children from the neighbourhood. The Court also found that this harassment had inevitably serious consequences on his mother's private and family life.

In response to the Court's findings, the Police Directorate in 2013 conducted a survey in its unit with a view to establish an effective mechanism to provide a proper response to similar forms of harassment and prevent its repetition. In 2014, amendments to the Police Duties and Powers Act were adopted to protect persons with disabilities from harassment by children and provide them specialized assistance. In addition, the Social Welfare Services Act entered into force in 2014 to provide for an adequate psychological support system for people with disabilities, victims of harassment, but also for children expressing violent behaviour, amongst other things. As regards effective remedies, the Police Act was modified in 2015 to strengthen disciplinary responsibility resulting from police negligence and omissions, introducing a complaints procedure ultimately decided by the Complaints Board whose independence and efficiency was further reinforced in 2019.

CRO / *Dorđević* (41526/10)

Judgment final on 24/10/2012

Final Resolution
CM/ResDH(2020)307

Enhanced protection of parental rights of disabled persons

The applicants in these cases were excluded from proceedings resulting in the adoption of their biological children, one because she had been deprived of her capacity to act since she was suffering from paranoid schizophrenia, the other she had a mild mental disability and had not been informed nor legally represented in such proceedings.

In order to avoid similar violation of the right to family life, the new Family Act 2015 introduced significant changes in respect of adoption proceedings, deprivation of paternal rights and legal capacity. The deprivation of the capacity to act no longer automatically results in divestiture of parental rights, but the exercise of parental rights may be stayed. Parents divested of capacity to act are informed on adoption proceedings beforehand and have a right to participate in such proceedings. The consent of biological parents divested of legal capacity to act is always required for adoption provided they are able to understand the meaning and consequences of the consent. In certain situations, the consent of a parent may be substituted by a court's decision.

CRO / *X* (11223/04)

Judgment final on 01/12/2008

CRO / *A.K. and L.* (37956/11)

Judgment final on 08/04/2013

Final Resolution
CM/ResDH(2018)82

Safeguards introduced regarding the extension of confinement in psychiatric hospital and forcible administration of medication

In this case, the Court criticised the involuntary confinement of the applicant for care in a mental hospital, without sufficient safeguards against arbitrariness as concerns the extensions of her confinement which were decided by the head of the hospital (violation of Article 5§1(e)). It criticised the lack of possibility to benefit from a second independent psychiatric opinion and the fact that the initiative of periodic review belonged solely to the authorities. The case also concerned the unlawful interference with her physical integrity due to the recourse to forcible administration of medication without adequate legal safeguards (violation of Article 8). The Court observed that the decision to confine the applicant included an automatic authorisation to proceed to forcible administration of medication which was solely in the hands of the doctors treating the patient and not subject to any kind of immediate judicial scrutiny.

FIN / *X.* (34806/04)

Judgment final on 19/11/2012

Final Resolution
CM/ResDH(2024)43

In response to the judgment, the Mental Health Act was amended in 2014 to provide patients with a right to request a second independent opinion before involuntary confinement is extended and to initiate themselves an appeal against the extension of involuntary confinement. In addition, legal amendments to the Mental Health Act and the Administrative Court Act entered into force on 1 April 2024, providing for a judicial remedy enabling patients to challenge decisions about forcible administration of medication directly before the administrative courts.

Stricter rules regarding consent for administering drugs to disabled children and incapacitated adults

UK / *Glass* (61827/00)
Judgment final on 09/03/2004

Final Resolution
CM/ResDH(2011)174

The decision of the hospital staff to impose medical treatment on a child with mental and physical disabilities in defiance of his mother's objections gave rise to a violation of his right to respect for his private life, and in particular his right to physical integrity.

Following the Court's judgment, the then Chief Executive of the National Health Service wrote to all Chief Executives drawing their attention to the judgment, reminding them of the United Kingdom framework and the circumstances in which doctors need to seek the intervention of the courts in the event of parental objections to proposed treatment. In addition, the "Reference Guide to Consent for Examination or Treatment" was amended in 2009, reaffirming that consent must be obtained before the medical treatment is administered and specifying that, in the case of minors and adults without legal capacity, a parent or a person authorised under a lasting Power of Attorney must provide consent. Furthermore, it also states that where necessary, the courts may overrule the refusal to medical treatment by a person with parental responsibility.

5. Disability status and benefits

Possibility to challenge decisions on invalidity benefits before an independent and impartial tribunal

ALB / *Dauti* (19206/05)
Judgment final on 03/05/2009

Final Resolution
CM/ResDH(2016)21

In this case, the Court found a violation of the applicant's right of access to a court under Article 6§1 of the Convention as the competent Medical Examination Appeals Commission on Capacity for Work did not constitute an "independent and impartial tribunal" and as the administrative decision on his incapacity to work and the corresponding benefits could not be challenged before a domestic court.

Following the Court's judgment, the Law on Social Security was amended in 2011 to ensure the independence and impartiality of the Medical Commissions on Capacity to Work ("KMCAP"). It consolidated the function and powers of regional and higher KMCAPs, and provided for eligibility criteria, terms of office, as well as rules on removal or resignation and modalities of oath of members of the commissions.

The 2015 Council of Ministers Decision *on the organisation, functioning and reward of the High Commissions on Work Capacity Assessment* provides for the possibility to challenge the decisions of lower/regional commissions before the Higher KMCAP. While decisions of the Higher KMCAP are binding and enforceable as regards the medical assessment, appeals against procedural shortcomings can be filed before the Administrative Court of First Instance.

Ensuring judicial review of decisions regarding disability status

According to the European Court, the Bulgarian Labour Expert Medical Commissions, in charge of determining the disability degree of individuals, could not be regarded as tribunals and their decisions therefore should have been subject to review by a judicial body with full jurisdiction.

Under the new 2004 Health Act, decisions of the National Expert Medical Commission (formerly the Central Labour Expert Medical Commission) determining the disability degree of individuals may be reviewed by the Sofia City Court.

BGR / *Mihailov* (52367/99)

Judgment final on 21/10/2005

Final Resolution
CM/ResDH(2009)76

Retroactive correction of legislative changes to protect disabled and vulnerable people against disproportionate reduction of their disability-related social-security benefits

In this case, the applicant had lost 67% of her capacity to work and was granted a disability allowance in 2001. Following a change in the applicable legislation in 2012 introducing additional eligibility criteria, she lost her entitlement to an invalidity pension. The Court noted the lack of proportionality between the aim pursued and the restrictions applied, in particular because the changes led to the complete deprivation of a vulnerable person's only significant source of income, resulting from retrospectively effective legislation that had contained no transitional arrangements applicable to them.

In 2018, the Constitutional Court held that there had been a legislative omission when the legislator failed to ensure that, during the review of an earlier disability assessment, the allowance granted to the applicant would not be lower than the previously granted allowance, unless a real physical improvement in the person's health situation had occurred. In response to this decision, in 2021, Parliament enacted a legislative amendment providing for ways to remedy the situation of persons whose disability allowance was lowered due to the obligatory reassessment on account of the legislative changes in 2012.

HUN / *Bélané Nagy group*
(53080/13)

Judgment final on 13/12/2016

Final Resolution
CM/ResDH(2023)323

6. Accessibility and non-discrimination

Obligation for tax authorities to take into account the specific needs of disabled family members

The tax authorities refused to grant a tax relief to the applicant on the purchase of a suitably adapted property for his severely disabled child. The Court considered that the authorities, when making an assessment of his tax obligation, had failed to provide objective and reasonable justification for not taking into account the inequality inherent in the applicant's situation as a parent of a child with disabilities.

While the new Real Estate Transfer Tax 2017 no longer provides for any possibility of tax relief on real estate purchases, the impugned proceedings were reopened following the Court's judgment and the applicant was exempted from real estate tax for the purchase of a home suitable for his child's specific needs.

CRO / *Guberina* (23682/13)

Judgment final on 12/09/2016

Final Resolution
CM/ResDH(2018)121

Constitutional Changes to protect the voting rights of people with a mental disability

In this case, the European Court considered that the indiscriminate removal of voting rights of persons with mental disabilities placed under partial guardianship, without an individualised

HUN / *Alajos Kiss*
(38832/06)

Judgment final on 20/08/2010

Final Resolution
CM/ResDH(2020)317

judicial evaluation and solely based on a mental disability necessitating partial guardianship, could not be considered compatible with the legitimate grounds for restricting the right to vote. To abolish the constitutional deprivation of voting rights of incapacitated persons, the Constitution was amended in 2012 to stipulate that courts are obliged to decide in each individual case whether the personal circumstances of each incapacitated person justifies or not maintaining guardianship and restriction of their voting rights. A ban on voting rights is no longer an automatic consequence of partial/full incapacitation, including for persons with mental disabilities. The modalities and criteria for the exclusion of incapacitated persons' voting rights to be decided by domestic courts in the context of guardianship proceedings were laid down in the 2013 Act on Electoral Procedure. Domestic courts separately specify in their reasoning whether, from the evidence available, it can be clearly established that due to mental impairment the person is unable to exercise the right to vote. The interested person has the right to be personally heard before such a decision is adopted.

Equal treatment between men and women in the allocation of disability allowances

Following a mother's decision to combine part-time work and care of her two children shortly after their birth, the authorities, based on a specific method of calculation (the so-called "combined method"), refused to continue granting disability allowances to her. The Court considered that this method "places individuals wishing to work part-time at a disadvantage compared with those in full-time paid work and those who do not work at all, it cannot be ruled out that this method of calculating disability will limit persons falling into the first of these categories in their choice as to how to divide their private life between work, household tasks and childcare" (§ 64 of the judgment) and found that in practice the application of that calculation method constituted a discrimination against women.

In order to avoid any further discrimination towards women in the granting of disability allowances, the Swiss Federal Social Insurance Office addressed a circular letter to all competent authorities in the area of disability insurance indicating that the said calculation method shall no longer be applied in similar cases and that a reduction in working time solely for family reasons related to childcare shall no longer be a reason for the revision of decisions granting disability benefits.

SUI / *Di Trizio* (7186/09)

Judgment final on 02/02/2016

Final Resolution
CM/ResDH(2017)128

Changes of administrative practice to ensure equal treatment of disabled persons with respect to military or civil service

Following the Court's judgment, which found that the applicant was discriminated on the ground of his disability on account of being obliged to pay a tax for exemption from military service from which he had been excused on medical grounds, although he wished to perform his military service, special forms of military or civil service were introduced, and the administrative practice was changed. If called-up persons deemed unfit for military service and subjected to the exemption-tax express their wish to perform their service (military or civil), their files are transmitted to the Federal Department of Defence, Civil Protection and Sport to re-examine the aptitude of these persons for special forms of service, adapted to their needs. Disabled persons can now be declared "fit for military service in specific functions only, with conditions" by a special commission, provided that they fulfil the psychological and physical requirements of military service. This new administrative practice came into force on 1 January 2013.

SUI / *Glor* (13444/04)

Judgment final on 06/11/2009

Final Resolution
CM/ResDH(2019)319

Amended teaching methods to ensure disabled students receive proper education

In this case, the violation stemmed from the refusal of enrolment of a blind student to the Music Academy, despite her having passed the entrance examination. The Court held that the national authorities made no effort in conducting an individual assessment of disabled students' needs; in particular, the Music Academy had never made any attempt to adjust its educational approach since 1976, to render it accessible to blind students.

In response to the Court's judgment, the Ministry of National Education amended the applicable secondary legislation, introducing new safeguards for disabled students. An Application Guide was disseminated in 2023, stressing that disabled students will be ranked according to specific procedures and principles by taking an aptitude test among themselves, thus securing disabled students' enrolment process to fine arts secondary schools. In addition, the Istanbul Technical University (to which the Music Academy is attached) amended its teaching methods to ensure disabled students, including those visually impaired, receive proper education. It adapted the enrolment and evaluation process, which now provides for the assignment of a teaching assistance to visually impaired students and the possibility to use braille alphabet in the exams.

TUR / Çam (51500/08)

Judgment final on 23/05/2016

Final Resolution
CM/ResDH(2023)456

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