



Romania must reform its legislation on legal guardianship of the mentally deficient

In today's **Chamber** judgment¹ in the case of [N. v. Romania \(no. 2\)](#) (application no. 38048/18) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private life) of the European Convention on Human Rights in respect of the applicant being divested of his legal capacity; and

a violation of Article 8 in respect of the change of his legal guardian.

The case concerned proceedings in which the domestic courts, basing their decisions mainly on medical expert opinions, divested the applicant of his legal capacity and placed him under the full authority of a legal guardian. It also concerned the manner in which the domestic authorities subsequently changed his legal guardian.

The Court found in particular that the legal provisions meant that the applicant's actual needs and wishes could not be factored into the decision-making process and the measure divesting him of his legal capacity could not be tailored to suit his situation. As a result, his rights under Article 8 had been restricted by law more than was strictly necessary.

In addition, the Court considered that the decision-making process for the applicant's change of legal guardian had not been accompanied by adequate safeguards. N. had been excluded from the proceedings for the sole reason that he had been placed under guardianship. No consideration had been given to his capacity to understand the matter and express his preferences. Moreover, the reason for the change was insufficient and the decision was disproportionate.

As the shortcomings identified in this judgment were liable to give rise to further justified applications in the future, the Court held under **Article 46 (binding force and execution of judgments)** that the Romanian State had to adopt measures with a view to bringing its legislation and practice into line with the international standards, including the Court's case-law, in the matter.

This is the second judgment by the Court finding a violation of the applicant's rights. In its judgment [N. v. Romania](#) (no. 59152/08) of 28 November 2017, the Court held that N. should be released without delay and recommended general measures for safeguarding the rights of individuals detained in psychiatric hospitals.

Principal facts

The applicant, N., is a Romanian national who was born in 1959 and lives in Bucharest.

From June 2006 until May 2018, he was detained in Săpoca Psychiatric Hospital (Romania).

Whilst there, in 2014, the district court appointed a temporary guardian for N. following an action lodged by the hospital to divest him of his legal capacity and to appoint a legal guardian for him. The

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.

hospital's reasoning was that he suffered from paranoid schizophrenia as confirmed by a psychiatric commission.

In August 2016, in the light of the diagnosis and the psychiatric report and taking into account N.'s written submissions which "confirmed his mental situation", the district court divested N. of his legal capacity and placed him under legal guardianship. Failing to find a family member or acquaintance willing to take on the role of guardian, the court designated the Unguriu social welfare authority, owing to its proximity to the hospital, and notably Ms T.E.C., one of its employees, as N.'s legal guardian.

N. appealed against that decision. He argued that the measure ordered by the court was not justified and had been taken in disregard of his procedural rights. He urged the court to take into account the precarious situation of people with mental disabilities, who were marginalised, segregated and subjected to institutionalised abuse. He also requested, without success, that the court refer the case to the Court of Justice of the European Union (CJEU) for a preliminary ruling, arguing that the decision contravened the requirements of the European Union legislation concerning the right to vote and the right to work of people with disabilities. In addition, he raised an objection to the constitutionality of Article 164 § 1 of the Civil Code concerning the guardianship procedure, which in his view discriminated against people with mental disabilities and deprived them of the exercise of their rights.

On 29 August 2016 the County Court gave a judgment stressing the need to end N.'s stay in the psychiatric hospital. On 21 February 2017, it ordered his release in conditions meeting his needs, but to no avail.

In the meantime, the applicant had brought his first case before the European Court concerning the lawfulness of his placement in the psychiatric hospital. In its judgment [N. v. Romania](#) (no. 59152/08) of 28 November 2017, the Court found in particular that, at least from 11 September 2007 (the date of the first review of the lawfulness of the detention), there had been no legal basis or justification for N.'s detention in a psychiatric hospital, since the national courts had not established that he posed a danger, as required by domestic law. Under Article 46 (binding force and execution of judgments), the Court held that the authorities should implement without delay the County Court's judgment ordering N.'s release in conditions meeting his needs, and recommended that the Romanian State envisage general measures to ensure that (1) the detention of individuals in psychiatric hospitals was lawful, justified and not arbitrary; and (2) any individuals detained in such institutions were entitled to take proceedings affording adequate safeguards with a view to securing a speedy court decision on the lawfulness of their detention.

In December 2017 a new psychiatric report reached the same conclusion as the first. It recommended that N., who was "mentally incapable of caring for himself, of deciding on his best interests, and of acting in an informed manner in compliance with his civil rights and obligations" should remain divested of his legal capacity. N. appealed on points of law, unsuccessfully.

In May 2018 N. was transferred from the hospital to the U. Centre for Neuropsychiatric Recuperation and Rehabilitation, a closed care home situated in Bucharest. Three months later the Bucharest District Court, following an application lodged by the Bucharest social welfare authority, designated Mr B.V.G., a psychologist who worked in the U. Centre and who, at that time, was also N.'s therapist, as his new legal guardian. The reason given for the change was that N.'s centre was too far away from Ms T.E.C and that the two guardians and the Unguriu social welfare authority had given their consent. N. was not party to those proceedings.

Complaints, procedure and composition of the Court

Relying on Article 6 (right to a fair hearing), Article 8 (right to respect for private life), and Article 14 (prohibition of discrimination) taken together with Article 8, N. complained that his privacy had been

breached, that the authorities had changed his legal guardian through proceedings in which he had not been involved, and that he had been discriminated against on the grounds of his mental illness and social status.

He complained that he had been automatically placed under legal guardianship as the law had not allowed for an individual assessment of his situation. Moreover, the measure had been taken based on his mental illness and lack of family support, and no alternative solutions had been sought by the authorities.

He also stated that the law itself had allowed the proceedings for the change of legal guardian to take place without his opinion being heard and without assessing his needs, wishes or preferences. Moreover, the court had not assessed the performance of the outgoing guardian or the status of the incoming guardian, or even the latter's unsuitability for the role owing to his position as N.'s therapist, case manager, and employee of the centre where N. was detained.

He requested that the Court indicate general measures to the Romanian State, specifically to carry out urgent reform with a view to ensuring that persons with psychosocial disabilities benefit from special protection under the law in line with the international standards.

The application was lodged with the European Court of Human Rights on 1 August 2018.

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

Yonko **Grozev** (Bulgaria), *President*,
Tim **Eicke** (the United Kingdom),
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Armen **Harutyunyan** (Armenia),
Pere **Pastor Vilanova** (Andorra),
Jolien **Schukking** (the Netherlands),

and also Andrea **Tamietti**, *Section Registrar*.

Decision of the Court

Article 8

The Court noted that, although the measure to divest N. of his legal capacity had been taken in his own and others' interests, the existing legislative framework had not left any room for an individual assessment of his situation. The Buzău County Court had acknowledged that the legislation did not cater for a more nuanced response to the applicant's problem, whereas the Constitutional Court distinguished between full capacity and full incapacity but did not provide for a "tailor-made response". Furthermore, the Constitutional Court had declared in its decision of 16 July 2020 that the legal provisions in question were unconstitutional and violated the State's international obligations with respect to the protection of the rights of people with disabilities.

The Court went on to consider whether the measure to fully divest N. of his legal capacity had been necessary and, in particular, whether the law providing for that as a general measure was compatible with Convention requirements. It noted that the legal provisions meant that the applicant's actual needs and wishes had not been factored into the decision-making process. As a result, N.'s rights under Article 8 had been restricted by law more than was strictly necessary. There had therefore been a violation of Article 8 in that regard.

In attempting to ascertain whether the change in legal guardian had been necessary, the Court observed that N. had been excluded from the proceedings for the sole reason that he had been placed under guardianship, without any consideration for his actual ability to understand the matter

and express preferences. Moreover, the Court was not convinced that N. would have had a real opportunity to appeal against the decision not least because it appeared that the decision in question had never been served on him. In the decision-making process, N.'s state of health had not been properly assessed and all views and interests had not been taken into account. The Court was not satisfied that the procedure had been accompanied by safeguards that were commensurate with the gravity of the interference and the seriousness of the interests at stake. The decision on the change of legal guardian had not been based on relevant and sufficient reasons and was disproportionate. There had therefore been a further violation of Article 8.

Article 6 and Article 14 taken together with Article 8

In view of its findings under Article 8, the Court, by five votes to two, held that it was unnecessary to examine the complaints raised under Article 6 and under Article 14 taken together with Article 8 of the Convention.

Article 46 (binding force and execution of judgments)

The Court was of the view that the shortcomings identified in this judgment could give rise to further justified applications in the future. For this reason, in the light of its finding of a violation of Article 8, and taking into account the Constitutional Court's recent findings, the Court found it crucial that the respondent State adopt the appropriate general measures with a view to bringing its legislation and practice into line with the findings of the Constitutional Court and with the international standards, including the Court's case-law, in the matter.

Article 41 (just satisfaction)

The Court held that Romania was to pay the applicant 7,500 euros (EUR) in respect of non-pecuniary damage and EUR 9,480 in respect of costs and expenses.

Separate opinions

Judges Motoc and Pastor Vilanova each expressed a partly dissenting opinion. These opinions are annexed to the judgment.

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.