



## Lazariu v. Romania

Application No. 31973/03

**Country:** Romania

**Region:** Europe

**Year:** 2015

**Court:** European Court of Human Rights European Court of Human Rights

**Health Topics:** Mental health

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Right to due process/fair trial, Right to liberty and security of person

### Facts

The applicant, a lawyer, was accused of inciting false testimony from witnesses involved in several sets of criminal proceedings. Upon presenting herself to the prosecutor's office, she was prevented from leaving and eventually taken to a psychiatric hospital.

The government alleged that the applicant was detained after she refused to review the criminal file against her and began to behave inappropriately, directing malicious language against prosecutors and police. The applicant alleged that she was detained arbitrarily. An examination conducted at the hospital concluded that the applicant was mentally sound, and she was released after a few days. A forensic medical exam revealed bruises on her arms and legs that could have been caused by blunt objects or pressure exerted by fingers.

The applicant was found guilty of the charges related to inciting false testimony. Her appeal on several grounds related to the fairness of the trial was dismissed. Several attempts on criminal and administrative grounds to challenge the incident in which she was taken to the psychiatric hospital were also dismissed. The applicant was sentenced to five years' imprisonment.

The applicant appealed to the European Court of Human Rights, alleging several violations of her rights under the European Convention on Human Rights ("Convention"): ill-treatment under Article 3, unlawful deprivation of liberty under Article 5(1), her right to judicial review of the legality of her confinement in a psychiatric hospital under Article 5(4), rights to a fair trial under Article 6, and her right to respect for her private life under Article 8.

### Decision and Reasoning

The Court held that there was a violation of the applicant's rights under Articles 5(1) and 5(4) of the Convention.

With regards to Article 5(1)(b), the Court found that while the deprivation of liberty was lawful according to the Romanian Code of Criminal Procedure (CCP), that detention is considered arbitrary when there is an element of bad faith or deception on the part of the authorities. In this case, the Court found that the prosecutor's office had detained the applicant after she refused to review her criminal file, even though reviewing one's criminal file is a right rather than an obligation. Thus, the authorities had no need to arbitrarily detain the applicant for choosing not to review her file.

Regarding Article 5(1)(e), the Court outlined three conditions to be satisfied before a person can be considered of "unsound mind" and deprived of liberty: (1) the person must reliably be proven to be of unsound mind; (2) the mental disorder must warrant compulsory confinement; and (3) the validity of continued confinement depends on the persistence of the disorder. The Court emphasized that less severe measures must be considered before a person is deprived of liberty. The Court found that the applicant was detained under a provision of the CCP mandating psychiatric assessment in cases where investigating authorities have doubts about the mental state of the accused. However, there was no evidence to indicate to the prosecutor that the applicant suffered from a mental disorder; she had no psychiatric record; and the prosecutor did not seek an expert medical opinion before sending her to the psychiatric hospital. The Court thus concluded that the applicant's detention was unlawful under Article 5(1)(e).

### Decision Excerpts

“The Court further notes that the applicant was ordered not to leave the premises of the prosecutor’s office at 9.30 a.m. on 28 May 2003 and that a police officer was assigned to enforce that measure. During the afternoon of that day the applicant was not allowed to leave the building freely; rather, the police escorted her by car to the Socola hospital. The Court therefore considers that the applicant was under the authorities’ control throughout the entire period and concludes that she was deprived of her liberty within the meaning of Article 5 § 1 of the Convention.” Para. 100.

“The Court notes that under Article 250 of the CCP (see paragraph 65 above) presentation of the criminal file is a right of the accused rather than a legal obligation. In order to allow the applicant to exercise that right, the authorities should have considered less severe measures than deprivation of liberty (see, *mutatis mutandis*, *Stelian Roșca v. Romania*, no. 5543/06, § 69, 4 June 2013). The Government did not argue that the authorities had considered alternative measures that would have enabled the applicant to become acquainted with the criminal file against her.” Para. 106.

“The Court reiterates that an expert medical opinion, prior to confinement, was essential in such a case, especially since the applicant had no psychiatric record (see *C.B. v. Romania*, cited above, § 56). The Government argued that the applicant had displayed violent behaviour in the past; however, the Court finds that such behaviour was limited to ‘spoken language’, as the prosecutor himself found. The Government did not argue that the applicant had committed acts of physical violence, posing a threat to herself or others (see *Filip*, cited above, § 60). In this regard, the Court takes note that, during the criminal proceedings against her, the applicant was not charged with any violent offence. Even accepting the Government’s argument that the applicant’s behaviour made it difficult to arrange for a prior consultation, the Court notes that the State authorities did not seek a medical opinion based simply on the applicant’s medical file either.” Para. 129.