



## Association for the Defence of Human Rights in Romania- Helsinki Committee on Behalf of Ionel Garcea v. Romania

Application No. 2959/11

**Country:** Romania

**Region:** Europe

**Year:** 2015

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

**Health Topics:** Chronic and noncommunicable diseases, Health care and health services, Infectious diseases, Informed consent, Medical malpractice, Mental health, Prisons

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Right to life

### Facts

The applicant was a Romanian NGO known as the Association for the Defence of Human Rights in Romania-Helsinki Committee (‘‘Association’’), representing a deceased party, Ionel Garcea. Garcea was a mentally ill prisoner who died in prison. During his sentence, he made a number of complaints about his treatment, with the Association representing him. In June 2007, Garcea attempted suicide and underwent an operation as a result. Less than a month later, Garcea died in the prison hospital.

Following his death, the Association filed an administrative complaint with the prison, asking for an investigation into his medical treatment and cause of death. The Association also sent a report about Garcea’s death to the prosecutor’s office. The prosecutor had ordered a forensic medical report, which stated that there was not enough evidence to suggest that medical assistance was inadequate. The prosecutor declined to pursue further investigation.

The Association appealed the prosecutor’s decision several times arguing that Garcea had not received appropriate treatment and that there had not been an effective investigation.

In 2011, the Bucharest Court of Appeal ordered that the investigation into the circumstances around Garcea’s death continue, as it had not been thorough. At the time of trial, the investigation into his death was still pending.

The Association argued that Garcea’s medical treatment, general treatment during detention, and the investigation conducted into his detention violated Article 2 (right to life), Article 3 (prohibition of torture), and Article 13 (right to an effective remedy) of the European Convention for Protection of Human Rights and Fundamental Freedoms (‘‘Convention’’).

### Decision and Reasoning

The Court held that there had been a violation of the procedural limb of Article 2. The Court agreed with the Association’s argument that the authorities failed to comply with their obligation to effectively investigate Garcea’s death. In particular, the Court noted that the investigations had been pending for more than seven years. Additionally, the Court noted that a joint committee between the Ministries of Justice and Health was not established, which was required under Joint Order no. 995/2007 when a death occurred in prison.

The Court held that there had been no violation of the substantive limb of Article 2. The Court stated that there was insufficient evidence to support a finding of medical negligence resulting in Garcea’s death, as the investigation was still ongoing.

The Court held that there was no reason to give separate rulings on Articles 3 and 13.

As for procedural issues, the Court held that the Association had standing to represent Garcea. The Court referred to a recent judgment in which the Court held that an association may represent a victim in the absence of power of attorney, and notwithstanding that the victim died before an application was submitted, when the circumstances are exceptional and the allegations serious. With respect to Garcea’s circumstances, the Court noted that he died in State custody with no known relatives and suffered from mental illness. The

Court also relied on the seriousness of the allegations under the Convention Articles. Finally, the Court considered the fact that the Association had represented him several times during his incarceration to be relevant.

### **Decision Excerpts**

“In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Where the authorities decide to place and maintain in detention a person with disabilities, they should demonstrate special care in guaranteeing such conditions as correspond to his special needs resulting from his disability.” Para. 66.

“The State’s duty to safeguard the right to life must be considered to involve not only the taking of reasonable measures to ensure the safety of individuals in public places but also, in the event of serious injury or death, having in place an effective independent judicial system securing the availability of legal means capable of promptly establishing the facts, holding accountable those at fault and providing appropriate redress to the victim.” Para. 67.

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