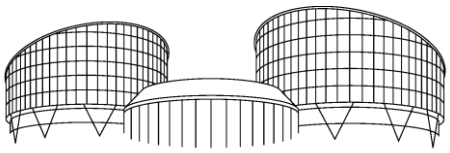

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF B. v. ROMANIA (no. 2)

(Application no. 1285/03)

JUDGMENT

STRASBOURG

19 February 2013

FINAL

19/05/2013

This judgment is final but it may be subject to editorial revision.

In the case of B. v. Romania (no. 2),

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President*,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco, *judges*,
and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 29 January 2013,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 1285/03) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Ms M.B. ("the applicant"), on 4 November 2002. The President of the Chamber decided of his own motion that the applicant's identity should not be disclosed (Rule 47 § 3 of the Rules of Court).

2. The Romanian Government ("the Government") were represented by their Agent, Ms C. Ciută, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the procedures by which she had been admitted to psychiatric institutions and her children had been taken into care had been unlawful.

4. On 9 November 2010 notice of the application was given to the Government. The initial application was supplemented by letters from the applicant, which were received at the Court between late 2002 and 2010. The Chamber also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

5. Corneliu Bîrsan, the judge elected in respect of Romania, withdrew from sitting in the case (Rule 28). The President of the Chamber accordingly appointed Kristina Pardalos to sit as an *ad hoc* judge in his place (Article 26 § 4 of the Convention and Rule 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant, Ms M.B., is a Romanian national who was born in 1958 and lives in Bacău. She was not represented by a lawyer before the Court or before the domestic authorities at any time.

7. She has been eligible for welfare benefits since 1996 as a disabled person who is unfit to work.

8. On 14 September 2000 she was diagnosed as suffering from "paranoid schizophrenia". Since then, she has been registered in the files of several psychiatric institutions.

9. The applicant is the mother of three children, two of whom, C.-L. and C.-I., born in 1992 and 1994 respectively, were minors at the material time. Her eldest daughter was above the age of majority.

10. A letter dated 18 January 2011 from the Bacău City Council Guardianship Authority to the Agent of the Romanian Government before the Court states that "according to checks carried out in the database of the Guardianship Authority Section (*Compartimentul Autoritate Tutelară*) at Bacău City Council, no measures to protect the interests of Ms [M.B.] – who has been diagnosed as suffering from paranoid schizophrenia – have been put in place (*nu s-a instituit*), either by means of partial or full guardianship". The letter adds that "likewise, no temporary guardianship arrangements have been made to assist her two children or to protect their interests during their mother's detention".

A. The applicant's admissions to psychiatric hospital

11. On several occasions since 2000 the applicant has been taken, usually by the police, to the psychiatric department of Bacău Hospital or the Socola psychiatric clinic and admitted for treatment. This happened between 14 September and 13 October 2000, 1 and 15 May 2002, 21 January and 17 February 2003, 12 May and 2 June 2004, 26 October and 4 November 2005, 18 and 31 March 2006, 21 July and 8 August 2006, 25 August and 13 September 2006, and 8 and 22 October 2007.

12. For example, in a letter dated 11 January 2003 the Izvoru Bereheciului police asked Bacău Hospital to admit the applicant on the grounds that she had been "found undernourished (*subnutrită*), living in a room without heating and with no material support". The letter concluded as follows: "We would be grateful if you could take medical action as her behaviour is antisocial".

13. The form for the applicant's admission to the hospital's psychiatric department, dated 12 May 2004, included a note in the "type of admission" section indicating that the police had taken her to the hospital as a matter of

emergency. A letter from the police dated the same day stated that the reason for taking her to the hospital was that she "represented a danger to her neighbours in the village by habitually starting fires in the courtyard of her house, entering local authority premises and frightening children in the street through her aggressive conduct".

14. Similarly, a hospital discharge form dated 8 August 2006 stated that the applicant had been "readmitted to hospital after being brought there by the police (*se reinternează adusă de poliţie*)" on 21 July 2006. An undated letter signed by the applicant requesting admission to the hospital was filed together with her admission form dated 21 July 2006. The letter stated that, should the need arise, her children could be contacted at their care home, the address of which was indicated.

15. A similar note indicating "type of admission: police" appears on the admission form dated 25 August 2006. A letter from the police dated the same day gave the same reasons as those set out in the letter of 12 May 2004, adding that the applicant had apparently "also been raped during the night of 24 to 25 August 2006". These events formed the subject of the *B. v. Romania* case (no. 42390/07, 10 January 2012).

16. The documents sent to the Court indicate that each time she was admitted to hospital, the applicant left after stays of varying lengths.

17. According to information supplied by the Government, the applicant was admitted to hospital four times in 2008, spending a total of five months in the psychiatric department for patients with chronic disorders.

18. In 2009 she was admitted to Buhuşi Hospital six times, spending a total of ten and a half months in the psychiatric department for patients with chronic disorders. In 2010 she was admitted a further seven times, spending a total of more than eleven months in hospital.

19. The applicant considers that she has been "permanently detained" by the authorities. She has not informed the Court whether she has challenged these measures under Law no. 487/2002 on mental health and the protection of individuals with mental disorders.

20. In a letter of 31 January 2011 to the Agent of the Romanian Government, the director of Buhuşi Hospital gave assurances that the applicant was being kept in good conditions in the hospital. The other relevant parts of the letter read as follows:

> "In reply to your letter no. 319 of 21 January 2011 concerning the case of [M.B.] we wish to provide the following clarifications: ...
>
> [M.B.] is a chronically ill patient who has been admitted to psychiatric clinics since 2000; she has delusions of persecution and prejudice.
>
> She has the right to receive information, as is demonstrated by her correspondence with the ECHR over several years.
>
> In our view, it is surprising that her bizarre, delirious, incoherent allegations – the work of a patient with chronic mental disorders – should be taken into account, thus

constantly obliging us to produce replies and official letters running to tens of pages, including archived documents, and to make a sustained effort to refute her blatant lies.

... [M.B.] is not a victim of the Romanian State but rather of the condition from which she is suffering."

B. Placement in care of the applicant's two minor children

21. From 2000 the applicant's two minor children no longer lived with her and, on account of her illness, were placed in a care home for abandoned children by a decision of the Bacău Child Welfare Board.

1. The placement proceedings

22. Two articles published on 9 and 12 September 2000 in the local newspaper *Deşteptarea* described the unhealthy conditions in which the applicant and her two minor children were living.

23. The day after the articles were published, the authorities were informed that the two children were being fed "grass, chestnuts, plantain leaves and mushrooms gathered in parks" and that their mother had also refused to enrol them in school.

24. On 12 September 2000, at the urging of social workers – as is apparent from a report of 13 September 2000 – the children's maternal grandmother sought assistance from the Bacău County Social Welfare and Child Protection Department (*Direcţia Generală de Asistenţă Socială şi Protecţia Copilului* – "the DGASPC") in having the applicant admitted to a specialist hospital on account of her mental illness and violent behaviour. The grandmother stated that the two children did not attend school and sometimes went without food and were left unsupervised, and gave her consent for them to be taken into care. The children were aged eight and six at the time.

25. Later that day, four welfare officers, two of them from the DGASPC and the other two from a care home for children, went to the applicant's house accompanied by a police officer. According to a report of 13 September 2000, drawn up following the visit, it was "plain to see" that the applicant was ill, that there was a lack of food in the house and that the living conditions were inadequate; for example, there was no heating or electricity. The report proposed that the children be taken into care as a matter of urgency because "their mother posed a danger to them".

26. The social services obtained statements from three of the applicant's neighbours, who described the appalling conditions in which the two children were living with their mother.

27. On the same day, the social workers took the children to the care home, after obtaining their grandmother's written consent.

28. Two psychosocial assessment reports were drawn up. They described the children's family situation and social, material and emotional

well-being, highlighting their dangerous living conditions. The reports noted that since 15 September 2000 the applicant had been detained in a psychiatric hospital.

29. In decisions nos. 978 and 979 of 26 September 2000 the Bacău Child Welfare Board ordered the children's placement in the Centrul Lalelelor ("Tulips") care home.

30. The applicant did not appeal against those decisions.

31. In decisions nos. 1374 and 1375 of 5 December 2000 the same board transferred the children to the Poiana Florilor ("Flower Meadow") care home in Humeiuş.

32. The applicant did not appeal against that decision.

2. Extension of the children's placement

33. On an application by the DGASPC, the Bacău County Court ordered in judgments of 14 December 2005 and 27 January 2006 that the children should remain in care. It also decided that the exercise of parental rights was to be delegated to the director of the care home.

34. The applicant was neither present nor represented in court.

35. The children were interviewed by the court in the presence of a social worker from the home.

36. The court observed that in September 2000 the children had been found in their mother's house in a state of destitution, without any lighting or food, and that they had not been enrolled in school. It added that their maternal grandmother was too old to look after them. The court concluded that the children's placement in care was in their interests, while also noting that since they had been in the home they had received regular visits from their mother.

37. The applicant did not appeal against those judgments.

38. She subsequently contacted various authorities in an attempt to regain custody of her children.

39. In two judgments of 17 August 2007 the Bacău County Court transferred the two children to the SOS Satul Copiilor ("SOS Children's Village") care home in Humeiuş, following the reorganisation of care homes. It held that their continued placement in care was justified by the fact that they had been emotionally abused by their mother at the time when they had initially been taken into care on 12 September 2000.

40. The applicant did not appeal against those judgments.

41. Reports issued by the DGASPC and periodic reports by representatives of Izvorul Berheciului District Council indicate that the children have often been visited by their mother.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Legislation on protection of people with mental disorders and relevant domestic practice

42. The legislation in force on the date of the application in the present case and the relevant domestic practice concerning the protection of people with mental disorders are partly outlined in the following judgments: *V.B. v. Romania* (no. 21207/03, § 37, 20 April 2010); *Parascineti v. Romania*, (no. 32060/05, §§ 25 and 29, 13 March 2012); and *Cristian Teodorescu v. Romania* (no. 22883/05, §§ 30-40, 19 June 2012).

1. The Mental Health Act (initial version)

43. Psychiatric detention is governed by the provisions of Law no. 487 of 11 July 2002 on mental health and the protection of people with mental disorders ("the Mental Health Act – Law no. 487/2002"), published in Official Gazette no. 589 of 8 August 2002. The Act makes a distinction between voluntary and compulsory admission to a psychiatric institution.

44. Sections 12 and 13 of the Act provide that the assessment of a person's mental health, with a view to making a diagnosis or determining whether the person is of sound mind, requires a direct examination by a psychiatrist at the request of the person concerned in the case of voluntary admission, or at the request of an appropriate authority or authorised person in the case of compulsory admission.

45. Pursuant to section 29 of the Act, the psychiatrist is required to obtain the person's consent for the treatment and to respect the person's right to receive assistance when giving his or her consent (*dreptul acestuia de a fi asistat în acordarea consimţământului*). Consent may be withdrawn at any time by the patient or his or her representative (section 30). Where the psychiatrist suspects that there is a conflict of interests between the patient and the representative, he or she must refer the matter to the public prosecutor's office in order to initiate the procedure for the appointment of a legal representative (section 31).

46. Anyone who is admitted to a psychiatric institution must be informed of his or her rights as soon as possible and must be given explanations he or she can understand as to how they are to be exercised. If the person is unable to understand the information, it must be provided to his or her legal or personal representative (section 38).

47. Any patient admitted voluntarily is entitled to leave the psychiatric institution at his or her own request at any time (section 43). The procedure outlined above concerning compulsory admission is also applicable where a person who had initially consented to admission withdraws the consent at a later stage (section 55).

48. Sections 44-53 of the Act govern the various circumstances in which compulsory admission may take place, following a psychiatric examination, and the relevant procedure (a request stating reasons, submitted by the family, the police or the person's doctor, among others; notification of the psychiatrist's decision to the patient, his or her representative and family, and also to the public prosecutor's office and a medical panel, for confirmation).

49. An appeal against a decision on compulsory admission may be lodged "with the competent court according to the law" by the patient or his or her representative (section 54).

50. The authorities, in particular the Ministry of Health, were required to take the necessary steps to apply the Act (section 63); the Ministry did so by issuing implementing regulations in a decree of 10 April 2006. The decree provided, *inter alia*, that the hospitals authorised to admit patients compulsorily were to be designated within a period of thirty days (Article 27). It also laid down the obligation for the psychiatrist to provide the patient, his or her family and his or her representative with information about the right to challenge the decision on admission and about the applicable procedure (Article 28), and contained standard forms for notification of the decision, as required by Law no. 487/2002.

2. Amendments to the Mental Health Act

51. Law no. 487/2002 was amended by Law no. 600/2004, published in Official Gazette no. 1228 of 21 December 2004, and subsequently by Law no. 129/2012, published in Official Gazette no. 487 of 17 July 2012.

52. Law no. 129/2012 has added a new section 38^1, which provides that anyone with full legal capacity who is admitted for psychiatric treatment is entitled to appoint an agreed representative free of charge to assist or represent him or her throughout the duration of the treatment.

Pursuant to this new provision, if the patient does not have a legal representative and has been unable to appoint an agreed representative because of mental incapacity, the hospital is required to give notice of this fact immediately (*de îndată*) to the guardianship authority for the patient's place of residence or, if the patient's place of residence is unknown, to the guardianship authority for the municipality in which the hospital is located, so that measures can be taken for the patient's legal protection.

3. Decree of 10 April 2006 issued by the Minister for Health on the application of the Mental Health Act (Law no. 487/2002)

53. This decree, which came into force on 2 May 2006, governs the procedure for implementing the Mental Health Act (Law no. 487/2002). Article 29 provides that an application for compulsory admission must be made at the hospital itself by one of the individuals or authorities authorised

by section 47 of Law no. 487/2002; the application must be made in writing and signed by the person submitting it, who must indicate the reasons why it is justified.

54. Article 28 states that if the psychiatrist considers that the conditions for compulsory admission are satisfied, he or she is required to inform the person concerned of his or her right to challenge the decision, explaining the procedure for doing so.

55. Article 33 requires psychiatric institutions to keep a dedicated register containing information about people who have been admitted against their will, including all decisions taken in relation to them. Article 34 outlines the formal requirements which the psychiatrist taking the decision on compulsory admission and the panel approving it must observe when notifying the public prosecutor's office of their decisions.

4. The Protection of People with Disabilities Act

56. The Protection of People with Disabilities Act (*Legea privind protecţia şi promovarea drepturilor persoanelor cu handicap* – Law no. 448/2006) was published in Official Gazette no. 1006 of 18 December 2006. It was subsequently amended, the revised version being published in Official Gazette no. 1 of 3 January 2008.

57. Under section 25 of the Act as amended, people with disabilities are protected against negligence and abuse, and against any discrimination based on their location. People who are entirely or partially incapable of managing their affairs are afforded legal protection in the form of full or partial guardianship, as well as legal assistance.

If a person with disabilities does not have any parents or any other person who might agree to act as his or her guardian, a court may appoint as guardian the local public authority or private-law entity that provides care for the person concerned.

5. Reports by non-governmental organisations on the application of the Mental Health Act

58. A report on observance of the rights of people detained in psychiatric institutions, issued in October 2009 by a non-governmental organisation, the Centre for Legal Resources (*Centrul de Resurse Juridice*), noted that the authorities had still not designated the hospitals that were authorised to admit patients compulsorily, which – coupled with the shaky knowledge among medical personnel of the procedures outlined above – meant that Law no. 487/2002 had been difficult to apply properly and consistently (for the relevant part of the report, see *Parascineti*, cited above, § 30).

59. In reply to a memorandum by Amnesty International, published on 4 May 2004, alleging that Romania was in breach of international standards

concerning admission to and conditions in psychiatric institutions, the Romanian Government issued a press release the same day disputing the claim that Law no. 487/2002 would not be applicable until rules for its implementation had been adopted. According to the Government, several sets of proceedings in which people had challenged orders for their compulsory admission to a psychiatric institution were pending at the time before the domestic courts.

60. The same memorandum stated that during a visit in November 2003 to a closed male psychiatric ward at Obregia Hospital in Bucharest, an Amnesty International representative had been told that many of the people who were taken to the hospital had initially refused to be admitted but had then been "persuaded" that this was in their best interests, before signing a form consenting to the treatment. Thus, twenty men in a locked ward were regarded as "voluntary" patients. Some of them had complained that they would like to leave the hospital but had not been allowed to.

B. The Family Code and the new Civil Code

1. Provisions on parental responsibility and the guardianship authority

61. The relevant provisions of the Family Code, as in force at the material time and until 1 October 2011 (when the new Civil Code came into force), concerning the general powers of the guardianship authority in relation to children are outlined in *Amanalachioai v. Romania* (no. 4023/04, §§ 54-56, 26 May 2009).

62. The relevant provisions of the Family Code, as in force at the material time, read as follows:

Article 97 § 2

"Parents shall exercise their parental rights in the child's interests."

Article 98

"Measures concerning the child's person and property shall be taken by joint agreement between the parents.

..."

Article 100 §§ 1 and 3

"Children below the age of majority shall live with their parents ...

In the event of a disagreement between the parents, the court, after consulting the guardianship authority and the child, if the latter is aged ten years or more, shall determine the matter, taking into account the child's interests."

Article 103

"Parents shall be entitled to request that their child be returned to them by any person having unauthorised custody of the child.

The courts shall refuse to grant such a request if it would not be in the child's interests. The child shall be consulted if he or she is aged ten years or more."

Article 108

"The guardianship authority [*autoritatea tutelară*] must continuously and effectively supervise the manner in which the parents discharge their obligations concerning the person and property of the child.

The delegates of the guardianship authority shall be entitled to visit children in their homes and to inform themselves by all available means about the manner in which the persons in charge of them look after them, about their health and physical development, their education ...; if need be, they shall give the necessary instructions."

63. The guardianship authority may be assisted in its work by support groups made up of figures such as members of parliament, teachers, lawyers and Red Cross officials.

64. The county child protection departments are public institutions at county level enjoying legal personality, under the authority of the county council. Their role is to provide children in difficulty with the necessary protection and assistance to enjoy their rights, and to support and advise them with a view to preventing any situations that might endanger their safety and development.

2. Provisions concerning deprivation of legal capacity and full and partial guardianship

65. The provisions of the Family Code concerning deprivation of legal capacity, as in force at the material time, read as follows:

Article 142

"Anyone lacking the discernment to defend his or her own interests on account of mental disturbance or deficiency shall be deprived of legal capacity. ..."

Article 149

"The guardian shall be required to take care of the person who has been deprived of legal capacity in order to expedite the person's recovery and improve his or her living conditions ...

The guardianship authority, with the agreement of the appropriate public health service and according to the circumstances, shall decide whether the incapacitated person is to be cared for at home or in a medical institution."

Article 152

"Besides the other cases specified by law, the guardianship authority shall appoint a temporary guardian in the following circumstances:

...

(b) where, on account of illness or for other reasons, a person – even if he or she retains legal capacity – is unable, either personally or through a representative, to take the necessary measures in situations requiring urgent action."

3. Provisions of the new Civil Code concerning deprivation of legal capacity and full and partial guardianship

66. The new Civil Code was published in Official Gazette no. 511 of 24 July 2009 and subsequently republished in Official Gazette no. 505 of 15 July 2011. It came into force on 1 October 2011.

Part III of the new Civil Code includes provisions on measures to protect adults who are unable to look after their own interests.

Article 164 largely reproduces former Article 142 of the Family Code. It provides that "anyone lacking the discernment to defend his or her own interests on account of mental disturbance or deficiency shall be deprived of legal capacity by a judicial decision [*interdicţie judecătorească*]".

Article 170 provides that the guardianship court (*instanţa de tutelă*) must appoint a guardian in the decision depriving a person of legal capacity.

Article 178 governs temporary guardianship, which must be introduced, among other circumstances, where, on account of illness, a person, even though retaining legal capacity, is unable to defend his or her own interests adequately and, for objective reasons, is unable to appoint a representative himself or herself.

C. Other relevant provisions concerning placement of children

67. Government Emergency Ordinance no. 26 of 9 June 1997 on the protection of children in difficulty was published in the Official Gazette on 12 June 1997. It has been repealed and replaced by Law no. 272/2004, published in the Official Gazette of 23 June 2004. The relevant provisions of the Emergency Ordinance, as in force when the applicant's two minor children were first taken into care, read as follows:

Section 7

"In order to ensure the best interests of a child in difficulty, the Child Welfare Board may order:

...

(e) the placement of the child in the care of a specialist public welfare institution or a licensed private institution."

Section 8

"If the child has been declared to have been abandoned in a final judicial decision ... parental rights shall be exercised by the county council, through the Child Welfare Board."

68. Section 14 of the Emergency Ordinance cited above stated that the authorities were required to encourage the continuation of family relations, to the extent that these were in the child's best interests.

69. Pursuant to section 14 of the Emergency Ordinance, the parents retained their parental rights and duties throughout the child's placement in care, except those which were incompatible with that protective measure.

THE LAW

I. PRELIMINARY OBSERVATION

70. With regard to the twenty-two letters which the applicant sent the Court between December 2002 and December 2010, the Government submitted that their contents were incoherent and that they did not raise any substantive complaints under the provisions of the Convention. They noted, for example, that in the letter received by the Court on 2 December 2002 the applicant had "complained that her inventions had been stolen" and "that the authorities had forcibly confined her in a psychiatric hospital, rendering her incapable of looking after her children".

71. The Court reiterates that a complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I). By virtue of the *jura novit curia* principle, it has considered of its own motion complaints under Articles or paragraphs not relied on by those appearing before it.

72. In the present case it considers that the applicant's complaints, which were duly accompanied by the relevant documents concerning her detention and the placement of her children in care, are sufficiently clear to be examined. The fact that these complaints were submitted at the same time as other, more confused complaints does not detract from their seriousness.

73. Accordingly, the Court considers that the case has been properly brought before it by the applicant, in accordance with Article 34 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3, ARTICLE 5 § 1 AND ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF THE ADMISSIONS TO PSYCHIATRIC INSTITUTIONS

74. The applicant complained that she had been wrongly admitted to psychiatric institutions. She relied, in substance, on Article 3, Article 5 § 1 and Article 8 of the Convention.

75. The Court, being master of the characterisation to be given in law to the facts of the case, considers it appropriate to examine the applicant's complaints under Article 8 of the Convention, which also requires the decision-making process in matters affecting private life to be fair and to

afford due respect for the interests safeguarded by that Article (see, *mutatis mutandis*, *Saleck Bardi v. Spain*, no. 66167/09, § 31, 24 May 2011).

Article 8 of the Convention provides:

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

76. The Government objected that the applicant had not exhausted domestic remedies, contending that she had not lodged complaints against the decisions on her compulsory admission.

77. The Court reiterates that, as it has consistently held, Article 35 § 1 of the Convention obliges applicants to exhaust the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. However, this rule must be applied with due allowance for the context, with some degree of flexibility and without excessive formalism. This means, amongst other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the applicant's personal circumstances (see *Selmouni v. France* [GC], no. 25803/94, § 77, ECHR 1999-V, *mutatis mutandis*; *Storck v. Germany* (dec.), no. 61603/00, 26 October 2004; *Rupa v. Romania* (no. 2), no. 37971/02, § 36, 19 July 2011; and *V.D. v. Romania*, no. 7078/02, § 87, 16 February 2010).

78. Thus, the Court has held, when examining the exhaustion of domestic remedies by minors or people with mental disabilities, that consideration has to be given to their vulnerability, and in particular their inability in some cases to plead their case coherently (see *A.M.M. v. Romania*, no. 2151/10, § 59, 14 February 2012).

79. The Court observes that the arguments in support of the Government's objection raise legal issues that are closely linked to the substance of the complaint and cannot be detached from its examination on the merits. It therefore considers that the objection should be examined under the substantive provision of the Convention applicable in the present case (ibid., § 44).

80. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

81. The applicant submitted that the police had abused their powers by having her admitted to psychiatric institutions when she had been seeking protection against various unlawful acts by third parties, such as the attempted rape on 24 August 2006. She contended that the authorities had detained her to prevent her from complaining, instead of affording her redress for her complaints.

82. Citing the cases of *Nielsen v. Denmark* (28 November 1988, §§ 70 and 72, Series A no. 144) and *H.M. v. Switzerland* (no. 39187/98, § 48, ECHR 2002-II), the Government submitted that the present case did not concern a deprivation of liberty.

83. They also asserted that the applicant's various admissions to psychiatric institutions had been voluntary, as she had given her consent. She had needed treatment in view of her chronic psychiatric condition. In that connection they referred to the undated statement signed by the applicant requesting treatment, which had been filed together with her admission form dated 21 July 2006, and to the informed consent form signed on her admission to Socola Hospital on that date.

84. Furthermore, the Government highlighted the authorities' good intentions, stating that the applicant's admissions to psychiatric institutions had taken place as a matter of urgency, being justified both by her violent conduct and by the need to protect her from herself. They asserted that the applicant had been examined by specialists on each occasion and had been given appropriate medical treatment.

2. The Court's assessment

(a) Principles established in the case-law

85. Referring to its settled case-law, the Court reiterates that there is a positive obligation on the State under Article 8 to take reasonable and appropriate measures to secure and protect individuals' rights to respect for their private life, which includes the right to physical and psychological integrity (see *Storck v. Germany*, no. 61603/00, § 149, ECHR 2005-V, and *Tysiąc v. Poland*, no. 5410/03, §§ 110-113, ECHR 2007-I).

86. In the case of people in a vulnerable position, including people with disabilities, the authorities must show particular vigilance and afford increased protection in view of the fact that such individuals' capacity or willingness to pursue a complaint will often be impaired (see, *mutatis*

mutandis, *M.B. v. Romania*, no. 43982/06, § 52, 3 November 2011, and *A.M.M. v. Romania*, cited above, § 56).

87. Similarly, the Court has held that the national authorities, and in particular the courts, have a duty to interpret the provisions of domestic law relating to psychiatric detention and, more generally, personal integrity in the spirit of the right to respect for private life under Article 8 (see *Storck*, cited above, § 147).

88. In addition, Article 8 requires the authorities to strike a fair balance between the interests of a person with mental disorders and the other legitimate interests at stake. As a rule, in such a complex matter as determining a person's mental capacity, the authorities should enjoy a wide margin of appreciation. The national authorities have the benefit of direct contact with the persons concerned and are therefore particularly well placed to determine such issues. The Court's task is rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation. The margin of appreciation to be afforded to the competent national authorities will vary according to the nature of the issues and the importance of the interests at stake (see *Elsholz v. Germany* [GC], no. 25735/94, § 49, ECHR 2000-VIII). Stricter scrutiny is called for in respect of very serious limitations in the sphere of private life (see *Shtukaturov v. Russia*, no. 44009/05, §§ 87-88, ECHR 2008).

89. The Court further reiterates that, while Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and must ensure due respect for the interests safeguarded by that Article. The extent of the State's margin of appreciation thus depends on the quality of the decision-making process. If the procedure was seriously deficient in some respect, the conclusions of the domestic authorities are more open to criticism (see, *mutatis mutandis*, *Sahin v. Germany*, no. 30943/96, §§ 46 et seq., 11 October 2001, and *Shtukaturov*, cited above, § 89).

90. In most of the previous cases before the Court involving "persons of unsound mind", the domestic proceedings concerning their detention were examined under Article 5 of the Convention. Therefore, in determining whether the proceedings relating to the applicant's admission to psychiatric institutions in the present case satisfied the requirements of Article 8 of the Convention, the Court will have regard, *mutatis mutandis*, to its case-law concerning Article 5 § 1 (e) of the Convention (see, *mutatis mutandis*, *Shtukaturov*, cited above, § 66).

91. The Court notes in this connection that in its recent judgment in the case of *Cristian Teodorescu* (cited above, § 65) it identified a number of shortcomings in the Romanian Mental Health Act (Law no. 487/2002), which was also applicable in the present case. The Court found that at the material time the Act had not contained any requirements as to the form in which the person concerned or his or her representative was to be notified of

a decision on compulsory admission under section 49 of the Act. It also noted that the Act did not set a deadline for the supervisory panel to inform the person and the representative of the decision it had taken.

92. The Court held that such shortcomings meant that a person who was the subject of a compulsory admission order faced a real risk of being prevented from using the remedies provided for by the Mental Health Act, such as an appeal under section 54. It also found it unsurprising, given the wording of the Act, that no appeal had yet been lodged with the domestic courts under that provision since the Act's entry into force on 8 August 2002, ten years previously.

(b) Application of these principles in the present case

93. Turning to the present case, the Court observes that from 2000 onwards the applicant was admitted to a psychiatric hospital or clinic on numerous occasions, in most cases at the request of the police.

For instance, on 11 January 2003 the police asked the psychiatric department of Bacău Hospital to admit the applicant on the grounds that she had been found "undernourished, living in a room without heating and with no material support", referring only very briefly to her "antisocial behaviour", without providing any specific details.

These factual aspects support the view that her successive admissions were involuntary, at least during the period from 2003 to 2007.

94. As regards the procedure resulting in the applicant's repeated detention in psychiatric institutions, although Law no. 487/2002 provides that a decision on compulsory admission must be approved by a medical panel comprising three specialists other than the one who ordered the admission and must then be forwarded to the public prosecutor's office, the person concerned and the person's representative, no evidence has been produced by the parties to show that this procedure was actually observed in the present case.

95. The Court further observes that there is no evidence that the applicant or anyone with close ties to her was notified of the decisions on her admission in accordance with the statutory procedure, including the requirement to observe the patient's right to be assisted when giving his or her consent, especially when the patient was unable to understand the relevant information. This demonstrates the uncertainty surrounding the applicant's successive admissions and their ambiguous nature (see, *mutatis mutandis*, *Cristian Teodorescu*, cited above, § 64).

Furthermore, these omissions are to be seen in the context of the shortcomings highlighted between 2003 and at least 2009 in reports issued by two non-governmental organisations operating at both national and international level (see paragraphs 58 and 60 above).

96. The Court observes in this connection that despite the fact that the Protection of People with Disabilities Act laid down the obligation to afford

legal protection to such people in the form of full or partial guardianship (see paragraphs 57 and 65 above), no such protective measure was taken in the applicant's case, even though the authorities had been aware of her state of health long before she had first been admitted to a psychiatric institution; she had been eligible for welfare benefits since 1996 as a disabled person who was unfit for work.

The applicant's vulnerability had also been noted and brought to the attention of the domestic courts in numerous reports by the social services that had taken care of her minor children (see, for example, paragraph 25 above). However, neither the social services nor the courts took any action on these findings in terms of affording legal protection to the applicant herself.

97. It was precisely this inaction by the authorities which contributed in the present case to rendering illusory the safeguards introduced by the Mental Health Act, in particular the patient's right to be assisted when giving consent (see paragraph 45 above). The same applies to the obligation to notify the patient's legal representative of the decision to admit the patient for treatment (see paragraph 48 above) and of the circumstances justifying such a measure (see paragraph 46 above).

98. The Court notes that the recent amendments to the Mental Health Act as a result of Law no. 129/2012 provide that if the patient has no legal representative and is unable to appoint one on account of mental incapacity, the hospital must immediately notify the guardianship authority for the patient's place of residence, or for the municipality in which the hospital is located if the patient's place of residence is unknown, so that measures can be taken to ensure legal protection. However, these new provisions have had no effect on the applicant's situation.

99. For these reasons, the Government's objection of failure to exhaust domestic remedies should be dismissed.

100. Despite the good will shown by the authorities, as highlighted by the Government, the Court considers that the provisions of domestic law governing psychiatric detention and the protection of people who are unable to look after their own interests were not applied to the applicant in the spirit of her right to respect for her private life under Article 8. As a result, the authorities failed to comply with their obligation to take appropriate measures to protect the applicant's interests.

101. The Court therefore concludes that there has been a violation of Article 8 of the Convention in the present case on that account.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF THE CHILDREN'S PLACEMENT IN CARE

102. The applicant complained that her two children who were minors at the material time had been taken into care. She relied in substance on Article 8 of the Convention (cited above).

A. Admissibility

103. The Government objected that the complaint concerning the placement of the applicant's children in care was out of time because the application had been lodged on 4 November 2002, whereas the children's placement in care dated back to 26 September 2000.

104. The Court observes that the decision-making process concerning the placement of the applicant's minor children in care began with the administrative authority's decision of 26 September 2000 and continued for several years after that date with the delivery of a series of court decisions, in particular those of 14 December 2005 and 27 January 2006. The complaint cannot therefore be regarded as having been lodged out of time.

105. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

106. The applicant submitted that her two children who had been minors at the relevant time had been taken from her and placed in care homes on account of the family's poor living conditions. She complained that their rights had been infringed and that no suitable protective measures had been taken. She relied in substance on her right to private and family life as enshrined in Article 8.

107. In the Government's submission, the decision to place the applicant's two minor children in care had been taken at the request of a family member, namely the children's grandmother, and had been justified by the fact that the applicant could not look after them properly. The measure had been provisional, remaining in place until such time as the mother could prove that she was capable of looking after her children. The Government added that after her children had been taken into care, the applicant had not lost the right to keep up personal relations with her children. As was apparent from the reports issued by the Social Welfare and Child Protection Department and the periodic reports by representatives of

Izvorul Berheciului District Council, the children had often been visited by their mother, so that family life between them had been preserved.

2. The Court's assessment

(a) Principles established in the case-law

108. The Court reiterates the principles established in its settled case-law to the effect that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life. Furthermore, the natural family relationship is not terminated by reason of the fact that the child is taken into public care. Decisions by the competent authority resulting in the placement of a child in a care home amount to interference with the applicant's right to respect for family life (see *W. v. the United Kingdom*, 8 July 1987, § 59, Series A no. 121).

109. As the Court has consistently held, such interference will be in breach of Article 8 unless it was in accordance with the law, pursued one or more legitimate aims under paragraph 2 and was necessary in a democratic society to achieve those aims. The notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. Although the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, there may in addition be positive obligations inherent in effective respect for family life. In determining whether an interference is necessary in a democratic society or whether there has been breach of a positive obligation, the Court will take into account that a margin of appreciation is left to the Contracting States (ibid., § 60).

110. Nevertheless, the procedures applicable to the determination of family-related issues must respect family life; in particular, parents normally have the right to be heard and to be fully informed in this connection, although restrictions on these rights may be justified, in certain circumstances, under Article 8 § 2.

111. The Court accepts that, in reaching decisions in so sensitive an area, the appropriate authorities are faced with a task that is extremely difficult. To require them to follow an inflexible procedure on each occasion would only add to their problems. They must therefore be allowed a measure of discretion in this regard. On the other hand, predominant in any consideration of this aspect of the case must be the fact that the decisions may well prove to be irreversible. This is accordingly a domain in which there is an even greater call than usual for protection against arbitrary interference (ibid., § 62).

112. It is true that Article 8 contains no explicit procedural requirements, but this is not conclusive. The appropriate authority's decision-making process clearly cannot be devoid of influence on the substance of the decision, notably by ensuring that it is based on relevant considerations and

is not one-sided and, hence, neither is nor appears to be arbitrary. Accordingly, the Court is entitled to have regard to that process to determine whether it has been conducted in a manner that, in all the circumstances, is fair and affords due respect to the interests protected by Article 8.

The relevant factors to be considered by a local authority in reaching decisions on children in its care must necessarily include the views and interests of the parents. The decision-making process must therefore be capable of ensuring that these factors are taken into account (ibid., §§ 62-63).

113. As the Court has also accepted, there will clearly be instances where the participation of the parents in the decision-making process will either not be possible or will not be meaningful – for example, where they cannot be traced or are under a physical or mental disability or where an emergency arises. Secondly, decisions in this area, whilst frequently taken in the light of case reviews or case conferences, may equally well evolve from a continuous process of monitoring on the part of the appropriate authority's officials. Thirdly, regular contact between the social workers responsible and the parents often provides a suitable channel for conveying the latter's views to the authority.

It must therefore be determined whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents were able to play a part in the decision-making process, seen as a whole, to a sufficient degree to provide them with the requisite protection of their interests. If not, there will have been a failure to respect their family life and the interference resulting from the decision will not be capable of being regarded as "necessary" within the meaning of Article 8.

114. Lastly, the Court again reiterates that the authorities must display particular vigilance when dealing with vulnerable people and must afford them increased protection as their capacity or will to pursue a complaint will often be impaired (see paragraph 86 above).

(b) Application of these principles in the present case

115. The applicant did not assert that the decisions by the authorities to take her two minor children into care had not been based on a provision of statute law or had not pursued a legitimate aim. There is no indication in the case file that the first of these requirements, as interpreted in the Court's case-law, was not satisfied. Neither is there any evidence that the measures taken were not designed to achieve a legitimate aim, namely the protection of health or of the rights and freedoms of others.

The issue arising in the present case is whether the procedures followed were compatible with the applicant's right to respect for her family life or

constituted interference with the exercise of this right which could not be justified as "necessary in a democratic society".

116. The Court observes that at the time of the events, as indeed at present, the applicant was suffering from a severe mental disorder, having been recognised as disabled since 1996 and having been admitted to psychiatric institutions on numerous occasions. In this connection, it notes that no special protective measures were taken in respect of her, for example by assigning a lawyer to represent her during the placement proceedings or appointing a temporary guardian (see also *B. v. Romania*, no. 42390/07, § 42, 10 January 2012, which concerns the same applicant).

117. It was precisely because of this shortcoming, which the Court has already noted (see paragraph 96 above), that the applicant was unable to participate effectively in the proceedings concerning the placement of her children in care or to have her own interests defended.

118. The Court also observes that the children's placement in care, having initially been based on a decision by an administrative authority in 2000, continued as a result of the Bacău County Court's judgments of 14 December 2005 and 27 January 2006. The court based its decisions on findings dating back to September 2000, when the children had been found in their mother's house in a state of destitution, without any lighting or food, and had not been enrolled in school. The court expressed the view that taking the children into care was in their interests, while also noting that they received regular visits from their mother.

The children were subsequently transferred to a different care home following court decisions of 17 August 2007 (see paragraph 39 above). It thus appears that these decisions, together with those of 14 December 2005 and 27 January 2006, were the only two occasions when the family situation of the applicant and her two minor children was examined by a court during a period of ten years, in the case of her daughter, and twelve years, in the case of her son, before they respectively reached the age of majority. On both occasions the courts' decisions were based entirely on the situation of the applicant and her children in September 2000.

The Court observes that it was clearly impossible for the applicant to take part in the decision-making process concerning her minor children, a factor that was highlighted by the competent authorities when the children were first taken into care. Moreover, there is no evidence of regular contact between the social workers responsible and the applicant, which could have provided a suitable channel for conveying her views to the authorities.

119. For these reasons, the Court considers that the decision-making process that resulted in the applicant's two minor children remaining in care was not conducted with due respect for her rights as enshrined in Article 8 of the Convention.

120. Having regard to the foregoing, the Court concludes that there has been a violation of Article 8 of the Convention under this head also.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

121. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Non-pecuniary damage

122. The Court refers at the outset to its settled case-law to the effect that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. If the nature of the breach allows of *restitutio in integrum*, it is for the respondent State to effect it. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Sfrijan v. Romania*, no. 20366/04, § 44, 22 November 2007, and *Association "21 December 1989" and Others v. Romania*, nos. 33810/07 and 18817/08, §§ 201-202, 24 May 2011).

123. In the present case, the Court observes that it has found a twofold violation of Article 8 of the Convention, on account of the lack of adequate legal protection for the applicant during her successive admissions to psychiatric institutions and during the proceedings that resulted in her children remaining in care. It would therefore be in the applicant's interests for the competent national authorities to take the initiative in affording her appropriate legal protection meeting the requirements of the Convention (see, *mutatis mutandis*, *Amanalachioai*, cited above, § 107).

124. While leaving the matter to the Court's discretion, the applicant submitted claims amounting to 200,000,000 euros (EUR) in respect of the non-pecuniary damage she had sustained as a result of the "theft and destruction of her own and her children's development".

125. The Government objected to these claims.

126. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 10,000 in respect of the non-pecuniary damage sustained.

B. Costs and expenses

127. The applicant did not submit or substantiate any claim for reimbursement of costs and expenses.

C. Default interest

128. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins to the merits* the objection of failure to exhaust domestic remedies and *dismisses* it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 8 of the Convention on account of the applicant's admissions to psychiatric institutions;

4. *Holds* that there has been a violation of Article 8 of the Convention on account of the placement in care of the applicant's minor children;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 19 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President