

With a judgement of October 12th, the Fourth Section of the European Court of Human Rights (ECHR), ruled against Romania for a violation of art. 5§1 and 8 of the European Convention on Human Rights which respectively guarantee the right to liberty and security and the right to respect for private life.

In the present case, the applicants were confined in a psychiatric hospital without their consent for the purpose of compelling them to undergo medical treatment. The two Romanian citizens, in the light of the provisions of Articles 5§1 and 8 of the Convention, stated that their compulsory confinement was unjustified and arbitrary.

Two forensic medical reports had established that the applicants were suffering from persistent delusional disorders as well as lack of discernment and that they ought to undergo psychopharmacological and psychotherapeutic treatment on an outpatient basis in a specialized medical unit. These forensic medical reports were carried out on October 4th 2011, following the opening of an investigation against the applicants, who were accused of offending public morality and breach of the peace for not wanting to disclose their identities to the police officers who had stopped them. The applicants' psychiatric evaluation had been requested in order to determine whether they were capable of understanding and willing at the time of the commission of the facts ascribed to them.

The ECHR found that the applicants' psychiatric assessments were carried out three years before the adoption of the compulsory confinement measure imposed on them on November 10th 2014, following their failure to comply with several judicial decisions that required them to follow a therapeutic path. However, according to the Strasbourg judges, the lack of a recent medical assessment alone was sufficient to conclude that the applicants' placement had been unlawful under Article 5 § 1 (e) of the Convention, which states that no one shall be deprived of his liberty save in the case of a «lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants».

Moreover, the Court reiterated that the confinement of a person had to be duly justified by the seriousness of the person's condition in the interests of ensuring his or her own protection or that of others. In the present case, however, and in the absence of detailed reasoning on this matter in the domestic decision ordering their confinement, the Court considered that it had not been established that the applicants posed a risk of injury to themselves or others, in particular because of their psychiatric condition. Not even from the forensic medical reports carried out starting from 2018 - required to determine whether it was necessary to maintain the confinement measure - did an effective assessment of the level of danger potentially represented by the applicants for themselves or for others emerge. This resulted in a violation of art. 5§1 of the Convention. The European Court then specified that the forced administration of medication represented a serious interference with a person's physical integrity and had accordingly to be based on a "law" which guaranteed proper safeguards against arbitrariness.

The confinement measure imposed on the applicants by the judgment of 2014 had been based on the provisions of the Criminal Code and of the Code of Criminal Procedure. Nonetheless, none of the national legal provisions referred to in this case established the regime applicable to the treatment of mental illness: the applicants did not have the possibility to ask a court to rule on the lawfulness and proportionality of the forced administration of medication, or to have it discontinued. In conclusion, the ECHR considered that even if the contested measure had a basis in Romanian law, the absence of sufficient safeguards against forced medication had deprived the applicants of the minimum degree of protection to which they were entitled in a democratic society. In such circumstances, the Court found that it could not be said that the interference in question had been "in accordance with the law" as required by Article 8 § 2 of the Convention. It followed that there had been a violation of the applicants' right to respect for private life.

## Riferimenti Normativi:



# The confinement in a psychiatric hospital and the obligation to undergo medical treatment therein violate the right to liberty and security as well as the right to respect for private live (art. 5§1 and 8, ECHR)

**Diritto penale** Reati in generale

Denise Campagna

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- art. 5 Convenzione Europea dei Diritti dell'Uomo
- art. 8 Convenzione Europea dei Diritti dell'Uomo