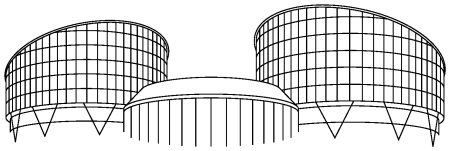

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ATUDOREI v. ROMANIA

(Application no. 50131/08)

JUDGMENT

STRASBOURG

16 September 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Atudorei v. Romania,

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

Josep Casadevall, *President*,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges*,
and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 26 August 2014,

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

PROCEDURE

1. The case originated in an application (no. 50131/08) 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 Dana Ruxanda Atudorei ("the applicant"), on 10 October 2008.

2. The applicant was represented by Ms A. Solomon, a lawyer practising in Bucharest. The Romanian Government ("the Government") were successively represented by their Agent, Mr Răzvan-Horaţiu Radu, and their Co-Agent, Ms I. Cambrea, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, a violation of her rights guaranteed by Articles 3, 5, 8, 9, 12 and 14 of the Convention, taken alone or in conjunction.

4. On 15 June 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Ms Dana Ruxanda Atudorei, is a Romanian national who was born in 1984 and lives in Bucharest.

A. The background of the case

6. In her initial letter to the Court, the applicant stated that from an early age she had been subjected to repeated physical and psychological abuse by her family. Her parents, especially her mother, had been aggressive towards her both verbally and physically, had refused to allow her to go anywhere unsupervised and had taken her to a psychologist because she had not achieved the highest possible marks when she was in second grade. In addition, her parents' abuse had continued after they discovered that she had been attending weekly yoga classes organised by the Movement for Spiritual Integration into the Absolute (*Mişcarea pentru Integrare Spirituală în Absolut* – "MISA").

7. According to some reports, including an Amnesty International report of 27 May 1997 (AI Index EUR 39/03/97), from 1995 there had been several accounts of alleged police abuse of individuals who practised yoga and who were members of MISA. The reports noted that the authorities seemed to condone public intolerance of MISA as they perceived the leader of the organisation as an individual who urged his sympathisers to leave their way of life in order to pursue a communal life and to practice sexual perversion.

8. In March 2004 a large-scale negative press campaign and police operation targeted MISA. The leader and some members of the organisation faced criminal investigation for the alleged sexual corruption of minors. MISA's leader left the country for Sweden. In 2005 the Swedish authorities refused an extradition request by the Romanian authorities.

B. The applicant's first placement in a psychiatric institution

9. On 30 July 2003 the applicant, who was of full legal age, was hospitalised in the Socola Psychiatric Hospital. According to her, she was taken to the said hospital by her parents against her will after they had discovered that she was attending yoga classes.

10. The medical reports produced by the said hospital stated that it was the first time the patient had been admitted to the Socola Hospital, and that she had been admitted at her mother's request because of anxious and negative behaviour, irritability, a tendency to cry easily and depression, which were a reaction to psychological trauma, in particular a conflict with her parents. She was diagnosed with reactive depression and anxiety. The applicant's condition had improved after group psychotherapy. She had been recommended medical treatment, psychotherapy and been advised to avoid psychotraumatic situations.

11. Her hospitalisation ended on 8 August 2003.

C. The applicant's alleged deprivation of liberty and her subsequent placement in a psychiatric institution

12. On 19 January 2005 the applicant travelled to her hometown, Bârlad, accompanied by M.A., her fiancé, in order to obtain a copy of her birth certificate, which she needed *inter alia* for her marriage to M.A.

13. While she was in the building housing the register office (*Oficiul de Stare Civilă*), her family appeared and surrounded her.

14. According to the applicant, her mother convinced her to go outside and talk to them before applying for her birth certificate. Once outside the building, her family became aggressive. After they pushed M.A. to the ground, they forced her into a vehicle and drove her to her grandparents' house. Once there, her family took away her regular clothes and replaced them with old clothes and slippers. They also took away her money and identity papers. In addition, she was kept indoors continuously, supervised, threatened and psychologically pressured by them.

15. On 21 January 2005 Dr F., a general practitioner, referred the applicant to a psychiatric hospital with a diagnosis of schizo-paranoid behavioural disorder (*tulburare de comportament de tip schizoparanoidă*). There is no evidence in the file if Dr F. assessed the applicant prior to the drafting of the referral note, or on how the diagnosis was established.

16. On 3 February 2005 the applicant's parents took her to the Nifon Unit of the Săpoca Psychiatric Hospital. According to the hospital's public webpage, it is located in a forest 25 kilometres from the town of Buzău and can be reached only by private car or minibus.

17. On the same date, the applicant's mother signed an informed consent form provided by the hospital on behalf of the applicant, acknowledging that she had read, understood and had time to consider all the information in the leaflet entitled "Information on Clozapin (Leponex) for patients and their families" (*Informații despre Clozapin pentru pacienți si familii*), that all her questions had been answered adequately and she had clarified any unknown words with the doctor or a member of the medical team, and that she was willing to accept the risks of the treatment.

18. The applicant's mother was admitted to the hospital together with the applicant and remained there for the first five weeks of the latter's hospitalisation.

19. According to a clinical observation paper on the applicant produced by the Săpoca Psychiatric Hospital, she had been hospitalised on the basis of Dr F.'s referral and diagnosis. The diagnosis on the day of hospitalisation had been "evolving borderline [disorder]" (*borderline în evoluție*). That diagnosis remained unchanged during her hospitalisation and on the day of her discharge. During her hospitalisation the applicant was given psychotropic drug treatment which included Leponex. Her condition and progress were regularly monitored. She repeatedly suffered from, *inter alia*,

constipation, lack of insight, lack of communication and drowsiness. She also presented a risk of orthostatic hypertension, which was monitored. In addition, on 4 March 2005 she "mentioned discharge" (*aminteşte despre externare*).

20. On 11 March 2005 the Vaslui Police Department informed M.A. that, *inter alia*, the applicant had been admitted to a specialised medical clinic for treatment and that the doctors had prohibited any contact with her during the full course of treatment.

21. On 16 March 2005 the applicant signed a written statement to the effect that she refused to allow the disclosure of the information in her observation paper.

22. The applicant was discharged from hospital on 1 April 2005.

23. On 24 August 2005, following an enquiry by Dr F., Dr I. agreed that the applicant was fit to enrol at a university.

24. On 16 October 2010 the management of the Săpoca Psychiatric Hospital informed the Government that according to Dr I. the applicant's hospitalisation had been voluntary. On account of the applicant's clinical condition, the informed consent form had been signed by the applicant's mother on her behalf. The applicant could have left the hospital at any time. The hospital was located in the middle of a forest but had no fence or guards. The applicant had had access to two mobile phones and two landline phones. She had not been guarded at any time during her hospitalisation because the Nifon Unit of the Săpoca Psychiatric Hospital was not designed for forced hospitalisation and was used only for voluntary hospitalisations. The informed consent form signed by the applicant's mother had amounted to an agreement to both hospitalisation and treatment because at that time, that is, on 3 February 2005, a standardised informed consent form had not been required. The hospital had applied the full procedure for non-voluntary hospitalisation as per the rules of enforcement contained in Law no. 487 of 11 July 2002 on mental health and the protection of people with mental disorders ("Law no. 487/2002") from 2006, when that legislation was enacted.

D. Criminal proceedings brought by the applicant's fiancé, M.A., in respect of the applicant's deprivation of liberty

25. On 19 January 2005 M.A. brought criminal proceedings against the applicant's parents and brother, for unlawful deprivation of liberty.

26. The preliminary criminal investigation was assigned to police officer G.C.

27. On 20 January 2005 the applicant's father gave a statement to the police officer. He mentioned that the applicant had refused to join them in returning home. Nonetheless, disregarding her refusal, they had taken her to her grandparents' house and then had her hospitalised. They had taken those

measures because they considered that it was their duty to help their daughter in view of the negative reports they had heard about MISA.

28. On 16 March 2005 police officer G.C. recommended, on the basis of the available evidence, that the Bârlad prosecutor's office should not initiate criminal proceedings. The police officer had established that in 2003 the applicant had left her parents' home and had started attending yoga classes organised by MISA. Subsequently, she had abandoned her studies and ceased to communicate with her family except for a few telephone conversations and a publicly televised argument. According to her parents, they had a family history of mental illness affecting consent. In this context, after discovering the applicant's visit to her home town they had tried to talk to her outside the register office, but M.A. opposed. After a skirmish, the applicant's mother had taken her to the family car in order to continue the discussion. M.A. had attempted to stop the car and had subsequently fallen to the ground. According to the staff members of the register office the applicant's parents had not acted against her will. From 19 January to 3 February 2005 the applicant had lived with her maternal grandparents and had then been hospitalised in the Săpoca Psychiatric Hospital. An attempt had been made to question the applicant while she was there, but this had not been possible because she had been administered psychotropic medication.

29. By a decision of 13 April 2005, the Bârlad prosecutor's office, in particular prosecutor N.C., relying on the facts established by police officer G.C., decided not to initiate criminal proceedings against the applicant's parents and brother on the ground that no offence had been committed.

30. The applicant's fiancé challenged that decision before the hierarchically superior prosecutor. He argued that the criminal investigation had been superficial because, *inter alia*, the authorities had failed to take a statement from the applicant, establish the type of medical treatment administered to her, and ascertain whether she had been taken away by her parents against her will.

31. By a final decision of 23 May 2005, the Bârlad prosecutor's office, in particular the head prosecutor R.F., dismissed M.A.'s challenge as ill-founded. It held that it had not been possible to take a statement from the applicant because she had been in a situation and state which prevented her from engaging in conversation as a result of psychotropic medication she had been administered, which had a negative psychopathological effect. Moreover, it would have been immoral to find that the applicant's parents had unlawfully deprived her of her freedom given that she had been unable to express her own will because she was constantly accompanied by MISA members and was not allowed to attend meetings alone. M.A. was sixteen years older than the applicant and he had not been able to prove that he was her fiancé. He had initially informed an employee at the mayor's office that he was the applicant's boyfriend, and had stated that he was her fiancé only

after a telephone conversation with a third party, and only in order to justify his own interests in respect of the applicant. It had been natural for the applicant's parents to attempt to bring their daughter back home by any means necessary and to try to ensure her physical and emotional recovery, given that they had seen the press campaign concerning what happened to young women at the MISA premises. According to her parents, they had made considerable efforts to recover the applicant physically, while psychologically it had been clear that she was unable to express herself as long as MISA members accompanied her everywhere, including to family meetings. As to the medical treatment the applicant had been administered, the parties would have to ask the doctor who had treated her. The applicant's fiancé appealed against that decision before the domestic courts.

32. By a judgment of 21 October 2005, the Bârlad District Court dismissed the applicant's fiancé's appeal. It held that he had refused to substantiate his action before the court. Moreover, there was no evidence in the file that the applicant's parents had unlawfully deprived her of her freedom.

33. There is no evidence in the case-file that the applicant's fiancé lodged any appeal on points of law (*recurs*) against that judgment.

E. The period after the applicant's release from the Nifon Psychiatric Unit

34. On 1 April 2005 the applicant was released from hospital and taken by her parents to her grandparents' house. According to the applicant, during her stay there she was kept under supervision and isolated from the outside world.

35. On 23 May 2005 the applicant brought criminal proceedings against her parents, alleging, *inter alia*, that they had forcibly detained her and that she had been unable to leave the house. She urged the authorities to do everything necessary to help her leave, given that she was of age and wanted to live her own life.

36. By a decision of 27 September 2005, the Bârlad prosecutor's office, dismissed the applicant's complaint on the ground that her parents' actions did not disclose any elements of an offence. It noted that the applicant's parents had been worried because she was a MISA member, and that was why they had taken her to her grandmother's home and then to a psychiatric hospital. According to the applicant's statement following her questioning, she had not been forcibly detained by her parents but they had helped to get her admitted to a psychiatric hospital. There is no evidence in the file that the applicant challenged the above-mentioned decision before the domestic courts.

37. According to the applicant, on 10 October 2005, helped by friends and her fiancé, she managed to leave her grandparents' house. Afterwards she settled in Bucharest and on 5 November 2005 she married M.A.

F. The disciplinary proceedings against Dr I.

38. On 3 August 2005 the applicant brought disciplinary proceedings before the Buzău Disciplinary Commission against Dr I. in respect of her forced placement in the Nifon Unit of the Săpoca Psychiatric Hospital and the medical treatment that she had received there.

39. On 13 December 2005 and 3 October 2007, Dr P., the applicant's private psychiatrist, issued two medical certificates stating that she was psychologically healthy. The certificates noted that the applicant had been monitored by Dr P. since 15 October 2005 and that during that time she had not received any treatment and had shown no signs of a psychological condition.

40. On 1 March 2006 the Buzău Disciplinary Commission dismissed the applicant's complaint. The applicant challenged the decision before the Higher Disciplinary Commission (*Comisia superioară de disciplină a Colegiului Medicilor din România*).

41. On 20 April 2007 the Higher Disciplinary Commission quashed the Buzău Disciplinary Commission's decision of 1 March 2006, finding that Dr I. had acted in breach of the rules of good medical practice, and gave him a warning (*avertisment*). It held that according to the available evidence the applicant and her parents had been in a state of conflict and she had been opposed to her hospitalisation. Consequently, the doctor had been required to examine the patient's clinical situation and the circumstances she was facing. Regardless of his decision, the doctor had to protect the patient. If he had assessed the patient's clinical condition as amounting to an imminent risk for her or others, or if failure to hospitalise her would have aggravated her condition, non-voluntary hospitalisation would have been required even if the patient objected to her hospitalisation. However, there was no evidence that the relevant procedure had been initiated.

42. At the same time, only medical reasons could justify a decision to hospitalise. However, the observation sheet produced by the hospital mentioned as one of the reasons for hospitalisation – none of them of a psychotic intensity to suggest a psychotic development in the borderline disorder – that the patient had joined counter-cultural informal groups (*agregă în grupuri informale disculturale*). Moreover, the observation sheet did not contain a full psychological assessment. Consequently, the treatment with Laponex had not been justified.

43. Furthermore, the Buzău Disciplinary Commission's arguments that the hospitalisation had not been forced because the patient could have left the hospital, and that Dr I. had a professional duty to examine the patient

and to prescribe adequate treatment, could not be taken into consideration. The doctor's conduct had to be in accordance with the law, which stated that the treatment had to be discussed with the patient and that the patient's consent had to be sought prior to treatment. The aforementioned conditions became less important only in the circumstances of forced hospitalisation. However, it did not appear that a forced hospitalisation procedure had been initiated in the applicant's case.

44. Leponex treatment was to be used exclusively in the advanced stages of schizophrenia or in cases of severe borderline personality disorder involving frequent relapses and self-harm, if no other medication proved to offer a satisfactory improvement in the patient's condition. The use of that medication in the applicant's case from the early stages of her treatment had been unusual. In some cases the medication could cause agranulacytosis (a low white blood cells count which favours fevers and infections). Consequently, doctors who prescribed it were required to comply strictly with the necessary safety measures. However, in the applicant's case there was no evidence that the required weekly blood tests had been carried out.

45. Furthermore, the necessary tests for establishing whether she was suffering from a borderline personality disorder had not been conducted at all.

G. Criminal proceedings brought by the applicant against her family members, police officer G.C., and Dr I.

46. On 14 December 2005 the applicant brought criminal proceedings for unlawful deprivation of liberty between 19 January and 10 October 2005, serious bodily harm, and cooperation with a view to committing an offence, against her family, police officer G.C. and Dr I. She argued that the culprits had cooperated in order to unlawfully deprive her of her liberty, to hospitalise her against her will and to damage her health as a result of the medical treatment she received in the hospital.

1. The criminal investigation carried out by the Bacău prosecutor's office

47. On 1 June 2006 the Bacău prosecutor's office questioned the applicant. She stated, *inter alia*, that on arrival at the hospital she had informed the nurse who had told her that she was being hospitalised that she opposed the measure. She had subsequently been taken to Dr I.'s office, where she had had a short conversation with him and she had expressly informed him that she did not wish to remain in the hospital. The doctor had informed her that her general practitioner had referred her to the hospital, and he forced her to take medication, which had made her drowsy and numb. Afterwards she had been taken out of the doctor's office and one of the nurses had asked her to sign a document which she was unable to read

owing to her situation. The nurse had not informed her of the document's content. Although she had signed the document automatically, she had only later been told that she had signed her hospitalisation papers.

48. The applicant further stated that during her hospitalisation she had been constantly supervised by her mother. In addition, she had received inappropriate medication and had constantly felt ill. In particular, she had suffered nausea, headaches, drowsiness, constipation, urinary incontinence, excess salivation, low immunity, loss of motor control and loss of insight. She had also gained fifteen kilos and had developed anaemia as a result of suffering haemorrhages.

49. She also stated that during her hospitalisation she had informed police officer G.C. that she had been hospitalised against her will, and because he had refused to act on that information she had refused to grant him access to her medical file. In July 2005 the same police officer had visited her at her grandparents' house to question her after her fiancé had brought criminal proceedings against some of her family members. On that occasion the police officer had dictated the content of her statement and had omitted some of the facts presented by her.

50. On 21 June 2006, the applicant informed the Bacău prosecutor's office that she had joined the criminal proceedings as a civil party.

51. On 28 November 2006, the Bacău prosecutor's office decided not to initiate criminal proceedings against G.C. on the ground that no offence had been committed, ordered that the criminal investigation be continued in respect of the applicant's family members, and referred the case to the Moineşti prosecutor's office. It noted that police officer G.C. had visited the applicant at the hospital in order to take a statement from her. While initially Dr I. had denied G.C. access to the applicant because of her medical condition, in the following days he had agreed to allow him to speak to her. The prosecutor's office also noted that according to G.C. the applicant had refused to provide a statement or to allow him to copy her medical observation papers, and had not informed him that she had been hospitalised against her will. Lastly, it noted that there was no evidence to suggest that police officer G.C. had been informed that the applicant had been deprived of her liberty when he questioned her at her grandparents' home in July 2005. The applicant challenged the decision before the hierarchically superior prosecutor.

52. By a decision of 5 February 2007, the head prosecutor at the Bacău prosecutor's office allowed the applicant's challenge, quashed the decision of 28 November 2006 and ordered that the investigation be reopened. The head prosecutor considered that the applicant and the defence witnesses indicated by her should be heard. In addition, the medical documents concerning the applicant's state of health, the reasons for her hospitalisation and her medical recovery were to be attached to the investigation file.

53. On 8 May 2007, the Bacău prosecutor's office decided not to initiate criminal proceedings against police officer G.C., the applicant's family members or Dr I. on the ground that no offence had been committed. It held that according to the medical report of 21 March 2005 produced by the Psychiatric Centre of the Nifon Unit, the applicant had been suffering from a schizo-paranoid behavioural disorder which had required her hospitalisation in a specialised medical facility for treatment and medical supervision. Her family's actions had been caused by the applicant joining MISA, and they had only been attempting to provide her with the opportunity to continue her treatment. The applicant challenged that decision before the hierarchically superior prosecutor.

54. By a final decision of 13 June 2007, the head prosecutor of the Bacău prosecutor's office dismissed the applicant's challenge and upheld the decision of 8 May 2007. The applicant appealed against the decision before the domestic courts. She argued that after the investigation of the case had been reopened on 5 February 2007, the authorities had failed to gather any additional evidence, in particular to hear witnesses, to determine the circumstances of her confinement, and to examine the medical treatment she had received, which had affected her health.

55. By a judgment of 16 November 2007, the Bacău County Court dismissed the applicant's appeal and upheld the decision of the prosecutor's office. It held that no offence of cooperating in order to commit an unlawful act could have been committed given that it could not be concluded that the alleged perpetrators had met one another other than by chance, or that they had made detailed plans to commit an offence. In addition, the available evidence did not confirm the existence of an offence of serious bodily harm. There were no medical reports supporting the allegations of trauma, and the medical report of 21 March 2005 produced by the Psychiatric Centre of the Nifon Unit had stated that the applicant was suffering from a schizo-paranoid behavioural disorder which required her hospitalisation in a specialised medical facility for treatment and medical supervision. Lastly, the available evidence did not confirm the existence of an offence of unlawful deprivation of liberty either. On the basis of the witness statements, it could not be concluded that on 19 January 2005 the applicant's family had acted against her will. The applicant had also failed to inform officer G.C. that her family had deprived her of her liberty either at the hospital or at her grandparents' home. Consequently, given the absence of clear and concrete evidence of guilt, the alleged perpetrators' right to the presumption of innocence could not be rebutted.

56. The court further dismissed the applicant's argument that after the re-opening of the criminal investigation no further evidence had been added to the file, on the grounds that she had been heard by the prosecutor's office and that she had not requested the hearing of witnesses or additional evidence. The applicant's argument that the authorities had failed to review

the circumstances of her confinement and the medical treatment she had received was also dismissed on the ground that the medical documents attached to the file had stated her diagnosis and the doctor's recommendation of hospitalisation, treatment and medical supervision.

57. The applicant lodged an appeal on points of law (*recurs*) against that judgment.

58. By a final judgment of 14 February 2008, the Bacău Court of Appeal dismissed the applicant's appeal on points of law on the ground that the available evidence did not clearly and unequivocally prove the guilt of the alleged perpetrators. The judgment was drafted on 20 February 2008 and appears to have been made available to the applicant on 18 June 2008.

2. The criminal investigation carried out by the Moinești prosecutor's office

59. On 27 February 2007, following the referral of the Bacău prosecutor's office of 28 November 2006 (see paragraph 51 above), the Moinești prosecutor's office decided not to institute criminal proceedings against the applicant's family members, Dr I., and police officer G.C., on the ground that no offences had been committed. It noted, *inter alia*, that the applicant had been committed to hospital with a diagnosis of paranoid behavioural disorder. Moreover, her condition required continuous outpatient medical care for an undetermined period of time. The applicant challenged the decision before the hierarchically superior prosecutor.

60. On 7 June 2007 the head prosecutor of the Moinești prosecutor's office declined to examine the applicant's challenge on the ground that the prosecutor who had delivered the decision of 27 February 2007 was his wife, and he referred the case to the Bacău prosecutor's office.

61. By a final decision of 15 June 2007, the Bacău prosecutor's office dismissed the applicant's challenge on the ground that it had already examined the issues raised by it in its decision of 8 May 2007. The applicant appealed against the decision before the domestic courts. She argued that the authorities investigating her case had failed to gather all available evidence, or hear all parties to the proceedings, and that the decision of the Bacău prosecutor's office had concerned a different person and different offences.

62. By a judgment of 22 November 2007, the Moinești District Court allowed the applicant's appeal, quashed the decision, ordered the Moinești prosecutor's office to continue its investigation of the case, to gather the evidence requested by the parties and to question the parties, the staff members of the hospital, and the neighbours of the grandmother in whose house the applicant had been held. It held that the previous decisions by the prosecutor's offices had addressed the applicant's complaints in respect of only some of the parties concerned. In addition, the medical report of 21 March 2005 had been contradicted by the conclusions of the Higher

Disciplinary Commission's decision. Further, according to the applicant's psychiatrist, from 15 October 2005 the applicant had not received any treatment and had not shown any symptoms of illness.

63. The Moineşti prosecutor's office and the defendants appealed on points of law. The prosecutor's office argued that the statements that had been taken by the Bacău prosecutor's office were relevant on account of the hierarchical relationship between the two prosecutors' offices, and therefore the re-questioning of the applicant and of the perpetrators had no longer been required. In addition, the applicant had failed to identify the witnesses she wished to have questioned. The questioning of all medical staff had no legal basis and the court had not identified which of the neighbours of the applicant's grandmother should have been questioned, or the scope of such questioning. Moreover, the applicant had failed to prove that any offences had actually been committed, had not submitted any medical report attesting to a bodily injury, and had herself acknowledged that she had signed the hospitalisation papers automatically, and that during her stay at her grandparents' home she had had access to a visiting room (*vorbitor*) and thus had been able to communicate with others. Furthermore, according to the Higher Disciplinary Commission the hospitalisation of a patient was possible against his or her will. The same body had concluded that the applicant's hospitalisation had been voluntary. Lastly, the psychiatrist had been disciplined on account of the inappropriate treatment administered to the applicant and not because the applicant had not been suffering from a behavioural disorder. The defendants argued that the circumstances of the case had already been examined during the sets of proceedings which had ended with the final decision of 23 May 2005 and the final judgment of 14 February 2008.

64. By a final judgment of 11 April 2008, the Bacău County Court declared the Prosecutor Office's appeal on points of law inadmissible on procedural grounds, allowed the defendants' appeal on points of law, quashed the judgment of the lower court, and dismissed the applicant's appeal against the decision of 15 June 2007. It held that the circumstances of the case had already been examined during the sets of proceedings which had ended with the final decision of 23 May 2005 and the final judgment of 14 February 2008, and that the applicant had not adduced any new information or evidence in order to justify the opening of criminal proceedings in respect of the same acts and persons.

H. Criminal proceedings brought by the applicant against prosecutors R.F. and N.C.

65. On 30 January 2006 the applicant brought criminal proceedings for abuse of office and aiding and abetting an offender against prosecutors R.F.

and N.C. The applicant complained about the quality of the prosecutors' investigations.

66. On 14 May 2008 the prosecutor's office attached to the Court of Cassation decided, on the basis of the available evidence, not to initiate criminal proceedings against the two prosecutors on the ground that no offence had been committed. It held that although insufficiently reasoned, the examination of the merits of the case by the Bârlad prosecutor's office had been accurate. In addition, it noted that those events which had taken place after 19 January 2005 had not been known at the time and therefore had not been investigated. Consequently, it referred the case to the Bârlad prosecutor's office in order for it to investigate the applicant's parents for the alleged deprivation of the applicant's liberty in the period between 19 January and 10 October 2005. The applicant challenged the decision before the hierarchically superior prosecutor.

67. By a final decision of 25 June 2008, the head prosecutor of the prosecutor's office attached to the Court of Cassation dismissed the applicant's challenge as ill-founded. The applicant appealed against that decision before the domestic courts.

68. By a decision of 11 November 2008, the Bârlad prosecutor's office dismissed the applicant's action concerning the alleged deprivation of her liberty by her parents in the period between 19 January and 10 October 2005. It held that the applicant's complaint had already been dismissed in the final judgments of 14 February and 11 April 2008 in accordance with the relevant rules of criminal procedure, and in the absence of any new relevant information the criminal proceedings could not be reopened or reinitiated. There is no evidence in the file that the applicant appealed against that decision before the domestic courts.

69. By a judgment of 21 January 2009, the Court of Cassation dismissed the applicant's appeal against the decision of 25 June 2008 as ill-founded. It held that there was no evidence suggesting that the prosecutors had committed an offence, or that the decisions taken by them had been unlawful. The applicant appealed on points of law against that judgment.

70. By a final judgment of 6 July 2009, the Court of Cassation dismissed the appeal as time-barred.

I. Other relevant information

71. The applicant submitted to the Court a large number of press articles, photographs and transcripts of television talk-shows concerning the conduct of the leader of MISA, the criminal investigation against him, the applicant's conflict with her parents, and the measures and efforts undertaken by her parents to reconnect with her.

72. By a decision of 13 April 2006 the Romanian Council for Combating Discrimination dismissed the applicant's complaint that the

actions of her parents and Dr I. had amounted to discrimination on the basis of her beliefs. It held that the facts of the applicant's case did not indicate discrimination. There is no evidence in the file that the applicant challenged that decision before the domestic courts.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Law no. 487/2002 on mental health and the protection of people with mental disorders

73. Psychiatric detention is governed by the provisions of Law no. 487/2002, published in Official Gazette no. 589 of 8 August 2002 and amended by Law no. 600/2004, published in Official Gazette no. 1228 of 21 December 2004 ("Law no. 487/2002"). Law no. 487/2002 makes a distinction between voluntary and compulsory admission to a psychiatric institution.

74. Articles 12 and 13 of Law no. 487/2002 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 assessment 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. For his assessment the psychiatrist must rely only on clinical reasons. Past hospitalisations or treatment cannot justify a present or future diagnosis of psychiatric illness (Article 14). The person who has been assessed, or his or her legal representatives, has the right to challenge the results of the assessment and to request a re-assessment (Article 16).

75. Pursuant to Article 29 of Law no. 487/2002, the psychiatrist is required to obtain the person's consent for the treatment and to respect the person's right to receive assistance in giving his or her consent (*dreptul acestuia de a fi asistat în acordarea consimţământului*). The psychiatrist may provide treatment without the patient's consent if the patient's behaviour amounts to an imminent risk of harm for him or herself or for others, or if the patient does not have the psychological capacity to understand their mental state and the need for initiating treatment. In the aforementioned cases, if the psychiatrist cannot obtain the consent of the legal or personal representative, he may act on his own; however, such action must be reviewed by a procedural review commission. Consent may be withdrawn at any time by the patient or his or her representative (Article 30). Where the psychiatrist suspects that there is a conflict of interests between the patient and his or her personal representative, he must refer the matter to the public prosecutor's office in order for a procedure for the appointment of a legal representative to be initiated (Article 31). Any patient or former patient has the right to lodge complaints (Article 34).

76. 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 such rights may be exercised. If the person is unable to understand the information, it must be provided to his or her legal or personal representative. A person who retains psychological capacity may assign his or her own representative (Article 38). Hospitalisation is permitted only on the basis of medical considerations (Article 40).

77. Any patient admitted to hospital voluntarily is entitled to leave the psychiatric institution at his or her own request at any time, except in circumstances where the requirements for involuntary hospitalisation are met (Article 43). Involuntary hospitalisation may only occur in the event of failure of all attempts at voluntary confinement (Article 44). It is authorised only if the psychiatrist decides that the person is suffering from a psychiatric problem and considers that he or she represents a threat to him or herself or to others, or if he or she risks having his or her health seriously damaged by refusing treatment (Article 45). A request for involuntary confinement may be lodged by the family or the general practitioner of the person concerned, by the representatives of the local public administration, or by the police, the prosecutor's office or fire-fighters. The persons requesting the involuntary confinement must attest under signature the reasons supporting their request, adding their own identity data, a description of the circumstances that have led to the request for involuntary confinement, as well as and the identity data of the person concerned, as well as their known medical history (Article 47). The transportation of the person concerned to the psychiatric hospital generally takes place by ambulance. If the behaviour of the person represents a danger for him or herself or for others, the transfer is performed with the support of the police, the gendarmerie or fire-fighters, observing the physical integrity and dignity of the person concerned (Article 48). The psychiatrist, after an evaluation of the mental state of the person concerned and of the appropriateness of non-voluntary hospitalisation, must immediately inform the patient, or his or her personal or legal representative, of his decision to administer psychiatric treatment (Article 49). If the psychiatrist considers that there are no grounds for non-voluntary hospitalisation, he must not detain the person and must state the reasons for his decision in his or her medical record (Article 51).

78. Pursuant to Article 52, the psychiatrist must notify his decision on non-voluntary confinement to a medical commission appointed by the hospital's director consisting of two psychiatrists, other than the one who decided on the hospitalisation, and a physician of a different speciality or a member of civil society. The commission must uphold or overrule the forced hospitalisation decision within seventy-two hours. The decision must also be notified to the prosecutor's office within a maximum of twenty-four hours for review (Article 53). The interested person or his or her personal or

legal representative may lodge a complaint against the decision before the competent court of law, which makes a decision after hearing the patient, if the situation allows, or after visiting the psychiatric hospital. The procedure outlined above concerning compulsory hospitalisation is also applicable where a person who has initially consented to admission withdraws his or her consent at a later stage (Article 55). Failure of mental health professionals to comply with the rules concerning data confidentiality and the principles and procedures regarding obtaining consent, initiating and maintaining treatment, non-voluntary hospitalisation and the rights of the committed patient renders them disciplinarily, contraventionally or criminally liable (Article 60).

1. Decree of 10 April 2006 issued by the Health Minister on the rules of enforcement for Law no. 487/2002

79. This decree entered into force on 2 May 2006. Article 29 provides that an application for compulsory admission must be made upon the patient's arrival at the hospital by one of the individuals or authorities mentioned in article 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 justifying it.

80. Article 28 states that if the psychiatrist considers that the conditions for compulsory hospitalisation 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.

81. Article 33 requires psychiatric institutions to keep a dedicated register containing information about persons who have been admitted against their will, including all decisions taken in relation to them.

2. Amendments to Law no. 487/2002

82. Law no. 487/2002 was amended by Law no. 129/2012, published in Official Gazette no. 487 of 17 July 2012.

83. A new Article 38^1 was added to Law no. 129/2012, providing that anyone with full legal capacity who retains full psychological capacity and is admitted for psychiatric treatment is entitled to appoint a conventional representative free of charge to assist or represent him or her throughout the duration of the treatment. The psychiatric institution must inform the patient of that right and provide him with a standardised form for assigning such representative.

84. If the patient does not have a legal representative and has been unable to appoint a conventional representative because he lacks psychological capacity, the hospital must immediately notify the guardianship authority at the patient's place of residence or, if the patient's place of residence is unknown, the guardianship authority of the

municipality in which the hospital is located, so that measures can be taken for the patient's legal protection.

3. Reports by non-governmental organisations on the application of Law no. 487/2002

85. A report on the observance of the rights of persons 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 was difficult to apply properly and consistently (see *B. v. Romania (no. 2)*, no. 1285/03, § 58, 19 February 2013).

86. In reply to a memorandum by Amnesty International issued on 4 May 2004, alleging that Romania was in breach of international standards as regards admission to and conditions in psychiatric institutions, the Romanian Government issued a press release on the same date disputing the claim that Law no. 487/2002 could not be applied 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 before the domestic courts at that time.

87. 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 people who were brought to the hospital initially refused to be admitted but were then "persuaded" that it was in their best interests, before signing a form consenting to treatment. Thus, twenty men being kept 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. Other relevant legal provisions

88. The relevant parts of Articles 278 and 278[1] of the former Romanian Code of Criminal Procedure, concerning complaints against prosecutor's office decisions, are set out in the judgement *Dumitru Popescu v. Romania* (no. 1) (no. 49234/99, §§ 43-45, 26 April 2007).

89. Articles 998, 999, 1000(3) and 1003 of the former Romanian Civil Code provide that any person who has suffered damage can seek redress by bringing a civil action against the person who intentionally or negligently caused that damage. Those charged with the supervision and control of a person whom they have appointed to perform a duty are responsible for the damage caused by the appointed person in the position granted. If several

persons are responsible for the damage caused, they are jointly liable for redress.

C. Domestic Practice

90. The Government submitted two final judgments, delivered on 3 March and 9 June 2005 by the Cluj Court of Appeal and Neamț County Court, respectively, awarding damages to victims of unintentional bodily harm and unintentional murder within the framework of criminal proceedings with civil claims opened by victims against medical staff and hospitals after it had been held that the criminal guilt of the medical personnel was established. The Government also provided one final judgment and two other judgments that do not appear to be final, delivered between 16 February 2007 and 9 December 2009 by the Cluj District and County Courts and the Bucharest Court of Appeal, awarding damages to victims of medical negligence within the framework of general tort law actions opened by the victims against medical staff and hospitals.

91. The Government further submitted one final judgment delivered on 23 October 2008 by the Târgu-Mureș Court of Appeal dismissing an applicant's requests to have previous diagnoses of mental health problems reviewed by way of a psychiatric expert report in the absence of voluntary hospitalisation in a psychiatric hospital.

92. The Government also provided one final judgment delivered on 10 September 2008 by the Brașov Court of Appeal dismissing a request by medical staff for the reversal of pecuniary sanctions applied to them by hospitals for physically abusing psychiatric patients. The domestic courts relied in their reasoning, *inter alia*, on the provisions of Law no. 487/2002 establishing the rights of such patients and the duties of the medical staff in such a situation.

93. On 28, 29 and 30 September and 1 October 2010, the Giurgiu, Teleorman, Ialomița and Sălaj County Courts, respectively, informed the Government that although they were unable to provide any relevant case-law, in their opinion the applicant could have opened general tort law proceedings against the doctor and the hospital on the basis of Articles 998 to 1003 of the former Romanian Civil Code, and could have complained against a non-voluntary hospitalisation decision on the basis of Article 54 of Law no. 487/2002. The Giurgiu County Court also stated that a prosecutor's decision to dismiss criminal proceedings opened by an applicant did not always prevent the victim from opening a general tort law action for damages against the doctor concerned. If the doctor had been punished by the Higher Disciplinary Comission, that represented sufficient grounds for the said action.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 5, 8, 9, 12 AND 14 OF THE CONVENTION

A. Admissibility

1. Non-exhaustion of domestic remedies

(a) The parties' submissions

94. The Government argued, without referring to a particular Article of the Convention, that the applicant had failed to exhaust the available domestic remedies. In particular, Law no. 487/2002 had afforded the applicant the necessary legal means to challenge her confinement to the psychiatric hospital. She could have contested the outcome of her evaluation, requested a medical re-examination and lodged complaints in accordance with the law. In so far as she had considered her confinement to be non-voluntary she could have brought proceedings before the domestic courts under Article 54 of Law no. 487/2002. Relying on the legal opinions given by the domestic courts, the Government also contended that although the procedure provided for by Law no. 487/2002 was accessible, clear and amounted to an effective remedy, the applicant had failed to use any of the legal means available to her under the said law.

95. Moreover, the Government contended that the applicant had not challenged all the prosecutors' offices' decisions on the basis of Articles 278 and 2781 of the former Romanian Code of Criminal Procedure. In particular, she had not appealed against the judgment of 21 October 2005 and had failed to challenge the decisions of 27 September 2005 and 11 November 2008. The fact that she had lodged several complaints with prosecutors' offices and had challenged some of their decisions did not exempt her from challenging all the decisions. Pending a favourable decision it was not permissible to lodge further complaints in respect of the same facts.

96. The Government also submitted that the applicant could have lodged a general tort action against the doctor and the hospital on the basis of Articles 998-999 of the former Romanian Civil Code. They argued that, according to the available domestic case-law and the legal opinion of the domestic courts, that remedy could have been used by the applicant successfully either within the criminal proceedings or in separate proceedings. The failure of the applicant to employ the remedy in question had prevented her from claiming damages directly before the Court.

97. The applicant submitted that she had been able to exhaust adequate and effective remedies only after 10 October 2005, when she had been

released from hospital and had escaped from her family. In this connection, she contended that she had lodged several criminal complaints against her family members, the psychiatrist Dr. I., and police officer G.C. for unlawful deprivation of liberty, bodily harm and association cooperation with a view to committing offences. In addition, she had joined the criminal proceedings as a civil party. Consequently, she had provided the authorities with the opportunity to examine her case and her claims. The authorities could have assessed if her hospitalisation, diagnosis and treatment had been carried out in accordance with the rules set out by Law no. 487/2002. In addition, the said Law provided that a doctor's criminal liability could be engaged if he had breached the principles protected by it.

98. All her criminal complaints had been dismissed. Consequently, a general tort law action on the basis of Articles 998-999 of the former Romanian Civil Code could not be considered an effective remedy. In the absence of a criminal prosecution and/or conviction of those responsible for her deprivation of liberty, she would have been unable to prove the link required for generating tort liability and, therefore, the remedy of bringing a civil action would have been illusory and theoretical.

(b) The Court's assessment

99. The Court reiterates that the rule of exhaustion of domestic remedies in Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system, thus dispensing States from answering before the Court for their acts before they have had an opportunity to put matters right through their own legal system. The burden of proof is on the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and in practice at the relevant time, that is to say, that the remedy was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *McFarlane v. Ireland* [GC], no. 31333/06, § 107 10 September 2010 and *T. v. the United Kingdom* [GC], no. 24724/94, 16 December 1999, § 55). Article 35 must also be applied to reflect the practical realities of the applicant's position in order to ensure the effective protection of the rights and freedoms guaranteed by the Convention (*Hilal v. the United Kingdom* (dec.), no. 45276/99, 8 February 2000).

100. The Court has consistently held that mere doubts as to the prospects of success of national remedies do not absolve an applicant from the obligation to exhaust those remedies (see, *inter alia*, *Pellegrini v. Italy* (dec.), no. 77363/01, 26 May 2005; *MPP Golub v. Ukraine* (dec.), no. 6778/05, 18 October 2005; and *Milosevic v. the Netherlands* (dec.), no. 77631/01, 19 March 2002).

101. However, the Court further notes that an applicant cannot be expected to continually make applications to the same body when previous

applications have failed (see *N.A. v. the United Kingdom*, no. 25904/07, § 91, 17 July 2008).

102. The Court notes at the outset that the Government did not identify which of the applicant's communicated complaints their objection concerned. Although their arguments appear to refer primarily to the applicant's complaints under Article 5 of the Convention, the Court considers that their objection concerns all the communicated complaints raised by the applicant under Articles 5, 8, 9, 12 and 14.

103. The Court notes with regard to the present case that in December 2005 the applicant brought criminal proceedings together with civil claims against her family members, police officer G.C., and Dr. I in respect of, *inter alia*, unlawful deprivation of liberty and serious bodily harm. In her complaint she maintained that she had been deprived of her liberty, had been hospitalised against her will, and that she had been given inappropriate medical treatment for her condition, which had caused her suffering and humiliation. In addition, she challenged the prosecutor's orders dismissing her complaint before the domestic courts (see, *a contrario*, *Parascineti v. Romania*, no. 32060/05, § 60, 13 March 2012). By a final judgment delivered in February 2008, the domestic courts dismissed her appeals against the prosecutor's orders, relying on the merits of the case. In this context, and in the absence of a *res judicata* decision of the Bacău Court of Appeal, the Court cannot accept the Government's argument that the applicant had a duty to challenge all the prosecutor's orders and court decisions delivered in the other sets of proceedings before the domestic authorities in order to be able to claim before the Court that she had exhausted all available domestic remedies.

104. Consequently, the Court considers that, notwithstanding the decision of the Higher Disciplinary Commission, the applicant did give the domestic authorities a sufficient and adequate opportunity to examine and remedy appropriately her allegations concerning unlawful deprivation of liberty, forced hospitalisation and consequences of inappropriate medical treatment (see *Cristian Teodorescu v. Romania*, no. 22883/05, § 46, 19 June 2012). In addition, in spite of the applicant's clear accusations, the domestic authorities failed to examine whether the actions of the alleged perpetrators had complied with the requirements of Law no. 487/2002. Moreover, there is no evidence in the file that a decision on forced hospitalisation was communicated to the applicant during her hospitalisation, or at a later date, in order for her to be able to contest it before a court under Article 54 of Law no. 487/2002.

105. Furthermore, the court notes that by the time the applicant's criminal proceedings with civil claims of December 2005 ended in February 2008, the prosecutor's office was, or should have been, aware of the decision of the Higher Disciplinary Commission of April 2007 holding Dr I. responsible for breaching the rules of good medical practice.

106. In this context, it appears to be common ground that the criminal proceedings with civil claims could in principle, if pursued successfully, have led to the extent of the alleged perpetrators' liability being established and eventually to the award of appropriate redress and/or publication of the decision (see *Jasinskis v. Latvia*, no. 45744/08, § 52, 21 December 2010). The Government have failed to demonstrate that the remedy offered by civil proceedings would have enabled the applicant to pursue objectives that were any different from the ones pursued through the use of the aforementioned remedy (see *Jasinskis*, cited above, § 53).

107. The Court therefore considers that in the circumstances of the present case there was no reason for the applicant to institute further sets of proceedings in addition to the criminal complaint with civil claims she had already instituted.

108. Accordingly, the applicant has exhausted domestic remedies and the Government's objection must be dismissed.

2. Six months

(a) The parties' submissions

109. The Government submitted, without referring to a particular Article of the Convention, that the applicant had not complied with the six-month time-limit in so far as the criminal proceedings were concerned. They noted that the criminal proceedings opened by the applicant's fiancé against her parents had ended with the judgment of 21 October 2005 of the Bârlad District Court and that the criminal proceedings opened on 23 May 2005 by the applicant against her parents had ended on 27 September 2005 with the decision of the Bârlad prosecutor's office. Consequently, the six-month time-limit had been exceeded because in the absence of new elements relevant to the case the applicant could not use the same legal means in respect of the same alleged offences in circumstances where the facts and the decisions delivered by the authorities were similar and there were new elements relevant for the case.

110. The applicant disagreed.

(b) The Court's assessment

111. The Court notes at the outset that the Government did not identify the exact parts of the applicant's communicated complaints that their objection concerned. Consequently, it considers that their objection concerns all the communicated complaints raised by the applicant under Articles 5, 8, 9, 12 and 14.

112. The Court notes that it has already established that, notwithstanding the other sets of proceedings opened by the applicant, the criminal proceedings with civil claims of December 2005 which ended with the final judgement of 14 February 2008 amounted to an effective remedy for the

purpose of the applicant's application before the Court. The Court also notes that the Government have not contested that according to the available evidence the aforementioned judgment was made available to the applicant only in June 2008.

113. In these circumstances, notwithstanding the Government's arguments, the Court considers that the applicant lodged her application within the six-month time-limit and that therefore the Government's objection has to be dismissed.

114. Lastly, the Court notes that the complaints under Articles 5, 8, 9, 12 and 14 communicated to the Government do not appear to be manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Alleged violation of Article 5 § 1 of the Convention

115. The applicant complained that her forced hospitalisation in the Nifon Unit of the Săpoca Psychiatric Hospital between 3 February and 1 April 2005 had amounted to a deprivation of her liberty contrary to Article 5 § 1 of the Convention, the relevant parts of which read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (e) the lawful detention ... of persons of unsound mind ..."

(a) The parties' submissions

116. The applicant submitted that according to the available evidence, including the decision of the Higher Disciplinary Commission and the medical certificate issued by Dr. P., she had not been suffering from a mental problem attested by an objective medical expert report. In addition, the reasons for her hospitalisation had not been of a nature or seriousness warranting hospitalisation. Moreover, she had been involuntarily hospitalised in the absence of any procedural safeguards in the domestic legislation.

117. The applicant contended that the Government had submitted to the Court two copies of the clinical observation paper produced by the Săpoca Psychiatric Hospital concerning the applicant. One of the copies had been attached to the applicant's file examined by the Higher Disciplinary Commission and the other copy had been issued directly by the psychiatric hospital. Although both copies had been signed by the same psychiatrist and had been stamped as certified true copies of the applicant's medical records,

they appeared to be fundamentally different. In particular, they had obviously been written by a different person and in some places the information recorded was different. Consequently, they raised serious doubts concerning the lawfulness of the psychiatrist's conduct.

118. The applicant further submitted that the Government's arguments in support of their observation were plagued by contradictions and ignored the available objective evidence concerning her forced hospitalisation and the treatment administered to her by the psychiatrist. In addition, contrary to their allegations that she had not consented to her stay in the hospital, it appeared that both copies of the applicant's clinical observation papers made available to the Court stated that on 4 March 2005 she had in fact "mentioned discharge".

119. The applicant argued that her mother had been hospitalised with her in order to monitor her and there was no evidence that she had acted as her legal representative or attendant. In addition, the argument that Dr I. had not been aware of the applicant's conflict with her parents had no credibility given that her case had been publicly exposed before her hospitalisation occurred.

120. The Government considered that the applicant's confinement to the psychiatric hospital had been in compliance with the requirements of Article 5 § 1 (e) of the Convention. In view of her medical history and her previous hospitalisations, the applicant had been reliably shown to be suffering from a mental disorder. In addition, her hospitalisation in the Nifon Unit had been carried out on the basis of a general practitioner's diagnosis. Moreover, her medical condition, her risk of orthostatic hypotension and her treatment had been monitored during her hospitalisation. The medical certificates of 13 December 2005 and 3 October 2007 relied on by the applicant could not be considered proof of her mental health at the time she was hospitalised.

121. The Government contended that Dr I. had confirmed that the applicant had been suffering from a mental illness and that her condition had persisted during her hospitalisation and at the time of her discharge. While the Higher Disciplinary Commission had considered the medical treatment administered to her to be inappropriate, it had not concluded that she had not been mentally ill at the time of her hospitalisation. Moreover, the applicant had failed to ask for a re-evaluation of her condition and therefore the Higher Disciplinary Commission had not been able to assess her mental condition and overrule her diagnosis. Although they did not contest the decision of the Higher Disciplinary Commission, the Government underlined that in the copy of the applicant's clinical observation paper issued directly by the psychiatric hospital the statement that she had joined counter-cultural informal groups was not given as a ground for her hospitalisation.

122. The Government argued that Dr I. had lawfully sought the applicant's mother's consent for the treatment as according to the applicant's clinical observation paper drawn up by the hospital, she had no insight, that is, she did not have the ability to recognise her own mental illness and need for treatment.

123. The Government underlined that the psychiatrist could not have been aware of the pre-existing conflict between the applicant and her parents. Moreover, there was no evidence in the file attesting that the applicant had attempted to inform police officer G.C. that she had been forcibly hospitalised. Furthermore, she had refused the police officer access to her medical file.

124. The Government also argued that according to the available evidence, including the conclusions of the Higher Disciplinary Commission, the applicant's hospitalisation had been lawful and voluntary. The fact that afterwards the applicant had contested the circumstances of her hospitalisation was not relevant since she had not proved that her consent to hospitalisation had been unlawfully obtained or that she had been deprived of her liberty against her will.

125. The Government underlined that the applicant had not been held in isolation and she could have asked to be discharged at any time. Dr I. had not taken any coercive action against her and she had had access to postal and phone services. Her mother's hospitalisation with her from 3 February to 10 March 2005 had also been justified by the general practitioner's diagnosis and that applicant's medical condition.

(b) The Courts' assessment

(i) Whether the applicant was deprived of her liberty

126. The Court notes at the outset that the parties disagreed as to whether the applicant's hospitalisation in the Nifon Unit of the Săpoca Psychiatric Hospital had been voluntary or not and whether her ability to leave the hospital had been restricted. Consequently, the Court must examine whether the applicant's situation constituted a "deprivation of liberty" for the purposes of Article 5 of the Convention.

127. The Court reiterates that in order to determine whether there has been a deprivation of liberty, the starting point must be the concrete situation of the individual concerned. Account must be taken of a whole range of factors arising in a particular case, such as the type, duration, effects and manner of implementation of the measure in question (see *Guzzardi v. Italy*, 6 November 1980, § 92, Series A no. 39, and *Ashingdane v. the United Kingdom*, 28 May 1985, § 41, Series A no. 93).

128. The Court further reiterates that the notion of deprivation of liberty within the meaning of Article 5 § 1 does not only cover the objective element of a person's confinement in a particular restricted space for a

significant length of time. A person can only be considered to have been deprived of his liberty if, as an additional subjective element, he has not validly consented to the confinement in question (see, *mutatis mutandis*, *H.M. v. Switzerland*, no. 39187/98, § 46, ECHR 2002-II).

129. In the instant case, the Court observes that the applicant's actual situation in the Nifon Unit of the Săpoca Psychiatric Hospital was disputed. Be that as it may, the question whether she was physically locked in the facility is not determinative of the issue. In this regard, the Court refers to its case-law to the effect that a person may be considered to have been "detained" for the purposes of Article 5 § 1 even during a period when he or she was allowed to make certain journeys or was in an open ward with regular unescorted access to unsecured hospital grounds and the possibility of unescorted leave outside the hospital (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 128, 17 January 2012, and *H.L. v. the United Kingdom*, no. 45508/99, § 92, ECHR 2004-IX). As to the circumstances of the present case, the Court considers that the key factor in determining whether the applicant was deprived of her liberty is that the medical staff of the Nifon Unit of the Săpoca Psychiatric Hospital exercised complete and effective control by means of medication and supervision over the assessment, treatment, care, residence and movements of the applicant from 3 February 2005, when she was admitted to that institution, to 1 April 2005, when she left the hospital. It appears from the Government's observations that she could have asked to be discharged at any time. Consequently, it seems that the applicant could not have left the institution without the medical team's permission. While there is no evidence in the file that the applicant made any attempts to leave the institution without informing the medical staff, it nevertheless appears from her clinical observation papers produced by the hospital on 4 March 2005 that she "mentioned discharge" (see paragraph 19 above). Even if the Court accepts that the authenticity of the copy of the applicant's clinical observation papers is debatable, none of the parties has contested the aforementioned statement. In addition, the Court notes that the hospital was located in a remote area and could be reached only by car, which made it difficult if not perilous for the applicant to leave on her own (see paragraph 16 above).

130. Moreover, it appears that the medical staff had full control over whom the applicant could see or speak to. In this connection, the Court notes that according to the available evidence, the medical staff did not allow police officer G.C. to see or speak to the applicant when he visited her for the first time on account of the treatment she was receiving. It was only a few days later that the police officer was granted access to her (see paragraph 51 above). In this context, the Court considers irrelevant, even if it was true, that the applicant had unrestricted access to phones and postal services.

131. Accordingly, in view of the specific situation in the present case the Court considers that the applicant was under continuous supervision and control and was not free to leave (see *Storck v. Germany*, no. 61603/00, § 73, ECHR 2005-V).

132. The Court observes that the duration of the measure taken against the applicant was almost eight weeks. The Court considers that such period is sufficiently lengthy for her to have felt the full adverse effects of the restrictions imposed on her (compare *Cristian Teodorescu*, cited above, § 56).

133. The Court also notes that in the case of *H.M.* (cited above), it held that the placing of an elderly applicant in a foster home in order to ensure the necessary medical care, as well as satisfactory living conditions and hygiene, had not amounted to a deprivation of liberty within the meaning of Article 5 of the Convention. However, each case has to be decided taking into account its particular "range of factors", and while there may be similarities between the present case and *H.M.*, there are also distinguishing features. In particular, even though, like in the case at hand, it was not established that H.M. was legally incapable of expressing a view on her position, she stated on several occasions that she was willing to enter the nursing home, and within weeks of being there she agreed to stay, which is in plain contrast to the applicant in the instant case. Further, a number of safeguards – including judicial scrutiny – were in place in order to ensure that the placement in the nursing home was justified under domestic and international law.

134. The Court further notes that in *Nielsen v. Denmark*, 28 November 1988, § 67, Series A no. 144, the applicant was an under-age child, hospitalised for the strictly limited period of only five and a half months, at his mother's request and for therapeutic purposes. The applicant in the present case was a fully functioning adult. Furthermore, in contrast to instant case, the therapy in *Nielsen* consisted of regular talks and environmental therapy and did not involve medication. Lastly, the Court found in *Nielsen* that the assistance rendered by the authorities on the applicant's hospitalisation was "of a limited and subsidiary nature", whereas in the instant case the authorities appear to have contributed substantially to the applicant's admission to the hospital and her continued hospitalisation.

135. As to the subjective aspect of the measure, the Court notes that at the time of her hospitalisation the applicant was of age and that there is no evidence in the file that she lacked legal capacity to decide matters for herself. However, according to the information received by the Government on 16 October 2010 from the management of the Săpoca Psychiatric Hospital, and notwithstanding the applicant's statement that she was told by the medical staff that she had signed the hospitalisation papers, Dr I. obtained the informed consent for the applicant's hospitalisation and treatment from the applicant's mother on account of the applicant's clinical

condition (see paragraph 24 above). In this context, the Court considers that it is reasonable to assume that the applicant did not directly consent to her hospitalisation and treatment.

136. In addition, the Court notes that there is no evidence in the file that the applicant's mother was appointed to act as her legal representative. Moreover, given the continual conflicts between the applicant and her parents, and in the absence of any express procedural safeguards provided by Law no. 487/2002, in force at the relevant time, with regard to the appointment of personal representatives, or of any explicit evidence that the applicant had appointed her mother as her personal representative at the time of her hospitalisation, the Court is not convinced that the applicant's mother acted as the applicant's personal representative. Consequently, the Court cannot accept that the applicant validly consented either directly or indirectly to her hospitalisation or treatment. The prosecutor's order of 27 September 2005 is not sufficient to persuade the Court to the contrary.

137. Moreover, according to the medical evidence in the case-file, during her hospitalisation the applicant lacked insight and therefore did not have the ability to recognise the need for her hospitalisation and treatment (see paragraph 19 above). Consequently, notwithstanding the parties' arguments to the contrary and the fact that she does not appear to have lodged complaints or attempted to escape from the institution, it does not appear that the applicant ever regarded her admission to the facility or her treatment as consensual.

138. Therefore, in view of the particular circumstances of the present case, the Court considers that the applicant never agreed to her hospitalisation and treatment in the Nifon Unit of the Săpoca Psychiatric Hospital.

139. Lastly, the Court notes that although the applicant's admission was requested by her mother, a private individual, it was nevertheless implemented by a State-run institution. Therefore, the responsibility of the authorities for the situation complained of was engaged (see *Shtukaturov v. Russia*, no. 44009/05, § 110, 27 March 2008).

140. In the light of the foregoing, the Court concludes that the applicant was "deprived of her liberty" within the meaning of Article 5 § 1 of the Convention between 3 February and 1 April 2005.

(ii) Whether the applicant's placement in the psychiatric hospital was compatible with Article 5 § 1

141. The Court reiterates that in order to comply with Article 5 § 1, the detention in issue must first of all be "lawful" in that it complies with a procedure prescribed by law; in this regard the Convention essentially refers back to national law and lays down the obligation to conform to the substantive and procedural rules thereof. It requires in addition, however, that any deprivation of liberty should be consistent with the purpose of

Article 5, namely to protect individuals from arbitrariness (see *Herczegfalvy v. Austria*, 24 September 1992, § 63, Series A no. 244). Furthermore, the detention of an individual is such a serious measure that it is only justified where other, less severe, measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained. This means that it does not suffice that the deprivation of liberty is in conformity with national law; it must also be necessary in the circumstances (see *Witold Litwa v. Poland*, no. 26629/95, § 78, ECHR 2000-III).

142. In addition, sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds for deprivation of liberty; such a measure will not be lawful unless it is based on one of those grounds (ibid., § 49; see also, in particular, *Saadi v. the United Kingdom* [GC], no. 13229/03, § 43, ECHR 2008, and *Jendrowiak v. Germany*, no. 30060/04, § 31, 14 April 2011).

143. As regards the deprivation of liberty of mentally disordered persons, an individual cannot be deprived of his liberty as being of "unsound mind" unless the following three minimum conditions are satisfied: firstly, he or she must reliably be shown to be of unsound mind; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement; thirdly, the validity of continued confinement depends upon the persistence of such a disorder (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33; *Shtukaturov*, cited above, § 114; and *Varbanov v. Bulgaria*, no 31365/956, § 45, 5 October 2000).

144. In examining whether the applicant's placement in a psychiatric institution was lawful for the purposes of Article 5 § 1, the Court must ascertain whether the measure in question complied with domestic law, whether it fell within the scope of one of the exceptions provided for in sub-paragraphs (a) to (f) of Article 5 § 1 to the rule of personal liberty, and, lastly, whether it was justified on the basis of one of those exceptions (see *Stanev*, cited above, § 148).

145. In the instant case, the Court notes that in the absence of the applicant's valid consent to her hospitalisation and treatment, the rules concerning voluntary hospitalisation of individuals with mental problems provided for by Law no. 487/2002 do not apply.

146. In addition, the Court notes that according to the available evidence and the applicant's medical records, the applicant was hospitalised on the basis of her general practitioner's referral and diagnosis (see paragraph 19 above). Law no. 487/2002 recognised the general practitioner as one of the individuals who could request the applicant's involuntary hospitalisation. However, the same Law provided that persons requesting the involuntary confinement of another person were to, *inter alia*, attest under signature to the reasons supporting their request, joining to it a description of the

circumstances that had led to the request, and a copy of the medical records of the person concerned (see paragraph 77 above). The Court notes that although the general practitioner's note was signed by him and the diagnosis was clearly stated on the note, there is no evidence in the file that the note was accompanied by a description of the circumstances that had led to the request or the reasons justifying it.

147. Moreover, although Law no. 487/2002 provided that a decision on hospitalisation had to be confirmed by a medical commission on which the doctor who had made the hospitalisation decision could not sit, and that subsequently such decision had to be sent to the prosecutor's office, the applicant or her representatives, there is no evidence in the file that the procedure in question actually took place in the present case. The Court's finding is reinforced by the Higher Disciplinary Commission's conclusion that no involuntary procedure had even been initiated in the applicant's case (see paragraph 43 above). Consequently, the Court considers that the failure of the authorities to initiate the involuntary procedure for hospitalisation in the applicant's case underlines the uncertainty and ambiguity of the applicant's deprivation of liberty, which situation was exacerbated by the deficiencies of the legislation in force at the time.

148. In this regard, the Court reiterates that the first paragraph of Article 5 § 1 must be interpreted as placing positive obligations on member States to protect the liberty of individuals within its jurisdiction and that the expressions "in accordance with the law" and "in accordance with a procedure prescribed by law" also concern the quality of the law providing the legal basis for measures of deprivation of liberty (see *Varbanov* cited above, § 51).

149. In this connection, the Court observes that it has already held that for the period prior to 2006, Law no. 487/2002 had been plagued with deficiencies in respect of the forced hospitalisation procedure and that the said deficiencies amounted to a real risk that a person in respect of whom an involuntary hospitalisation decision had been taken would be prevented from making use of the remedy provided for by Law no. 487/2002, such as an appeal under Article 54 (see *Cristian Teodorescu*, cited above, § 65). The Court further observes that even if some of the aforementioned deficiencies may have been remedied by the rules of enforcement in respect of Law no. 487/2002, those rules entered into force only on 2 May 2006, more than a year after the applicant's discharge from hospital.

150. The aforementioned considerations are sufficient to enable the Court to conclude that the applicant's deprivation of liberty was not in accordance with the law.

151. The Court also reiterates that while it is true that Article 5 § 1 (e) authorises the confinement of a person suffering from a mental disorder, such a measure must be properly justified by the seriousness of the person's condition in the interest of ensuring his or her own protection or that of

others. Moreover, it may be acceptable, in urgent cases or where a person is arrested because of violent behaviour, for such an opinion to be obtained immediately after the confinement, but in all other cases prior consultation is necessary. Where no other possibility exists, for instance owing to the refusal of the person concerned to appear for an examination, at least an assessment by a medical expert on the basis of the file must be sought, failing which it cannot be maintained that the person has reliably been shown to be of unsound mind (see *Varbanov* cited above, § 47; *Cristian Teodorescu*, cited above, § 67; and *Stanev*, cited above, § 157).

152. In the present case, however, it has not been established that the applicant's deprivation of liberty was necessary, given the circumstances of her situation, or that other, less restrictive, measures could not have sufficed to protect her interests or the interests of the general public.

153. In this connection, the Court notes that according to the Higher Disciplinary Commission, the applicant's clinical observation papers did not include a full psychological assessment, and that the necessary tests for establishing whether she was suffering from borderline personality disorder had not been conducted at all (see paragraphs 42 and 45 above). In view of the parties' disagreement on the matter, the Court is prepared to accept that the applicant's hospitalisation was based exclusively on medical reasons; however, although the applicant had previously been hospitalised in a psychiatric institution on one previous occasion, there is no evidence in the file that she had ever tried to harm herself or others. Moreover, the fact that she was discharged with the same diagnosis as upon her hospitalisation raises serious doubts as to the necessity of the impugned measure for the purposes of Article 5 § 1 (e). Lastly, the Government have not put forward any convincing arguments as to why the applicant's condition could not have been treated and monitored without her being deprived of her of her liberty.

154. Having regard to the foregoing, the Court observes that the applicant's deprivation of liberty was not justified under sub-paragraph (e) of Article 5 § 1. Furthermore, the Government have not indicated any other grounds listed in sub-paragraphs (a) to (f) which might have justified the deprivation of liberty in issue in the present case.

155. There has therefore been a violation of Article 5 § 1 of the Convention.

2. Alleged violation of Article 8 of the Convention

156. Relying expressly on Article 3 and in substance on Article 8 of the Convention, the applicant complained that the medical treatment provided to her in the Nifon Unit of the Săpoca Psychiatric Hospital had interfered with her right to respect for her private life.

157. The Court reiterates that since it is master of the characterisation to be given in law to the facts of the case, it does not consider itself bound by

the characterisation given by applicants (see *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions 1998-I*). Therefore, it considers that in view of the nature of the applicant's complaint, it should examine it under Article 8 of the Convention, which reads as follows:

> "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) The parties' submissions

158. The applicant submitted that the treatment she had received during her hospitalisation had interfered with her right to respect for her private life. The treatment had isolated her from the friends and social environment she had been accustomed to, as well as from her fiancé. The interference had been arbitrary and contrary to her will.

159. The Government contended that the psychiatrist had treated the applicant with her representative's consent. Consequently, they considered that the treatment had not interfered with her right to respect for her private life. In any event, the treatment had been lawful and had pursued a legitimate aim.

(b) The Court's assessment

160. The Court reiterates that a person's body concerns the most intimate aspect of private life (see *Y.F. v. Turkey*, no. 24209/94, § 33, ECHR 2003-IX, with further references). Thus, compulsory medical treatment, even if it is of minor importance, constitutes an interference with that right (see *X v. Austria*, no. 8278/78, Commission decision of 13 December 1979, Decisions and Reports (DR) 18, and *Acmanne and Others v. Belgium*, no. 10435/83, Commission decision of 10 December 1984, DR 40).

161. The Court notes that it has already established that the applicant was administered treatment in the absence of her valid direct or indirect consent and in circumstances where a State-run psychiatric hospital exercised complete and effective control over her.

162. Consequently, the Court considers that there was an "interference by a public authority" with the applicant's right to respect for her private life (see *Y.F. v. Turkey*, no. 24209/94, cited above, § 35).

163. Such an interference will breach Article 8 of the Convention unless it is "in accordance with the law", pursues one of the legitimate aims set out in the second paragraph of that Article, and can be considered "necessary in

a democratic society" in pursuit of that aim (see *Dankevich v. Ukraine*, no. 40679/98, § 151, 29 April 2003, and *Silver and Others v. the United Kingdom*, 25 March 1983, § 84, Series A no. 61).

164. In this connection, the Court notes that according to Law no. 487/2002, the psychiatrist could only treat the applicant after obtaining valid consent from her to the treatment. He could have proceeded with the treatment even in the absence of valid consent in circumstances only if the absence of treatment would have resulted in an imminent risk of harm for her or for others, or if she had not had the psychological capacity to understand her illness and the need for initiating treatment. However, in those circumstances he would have been required to submit his action to a procedural review commission for review (see paragraphs 76-78 above).

165. The Court notes that the psychiatrist acted in the absence of the applicant's valid consent. In addition, there is no evidence in the file, and the Government failed to demonstrate, that the psychiatrist submitted his decision on treatment for procedural review.

166. In the light of the foregoing, the Court finds that the interference in issue was not "in accordance with law".

167. This finding suffices for the Court to hold that there has been a violation of Article 8 of the Convention. It is not therefore necessary to examine whether the interference in question pursued a "legitimate aim" or was "necessary in a democratic society" in pursuit thereof (see *M.M. v. the Netherlands*, no. 39339/98, § 46, 8 April 2003).

3. Alleged violation of Article 5 § 4, taken alone or in conjunction with Article 14 of the Convention

168. The applicant further complained that the failure of the authorities to review the lawfulness of her detention and to carry out an effective investigation into the arbitrary deprivation of her liberty on account of her association with MISA had breached her rights guaranteed by Article 5 § 4, taken alone or in conjunction with Article 14 of the Convention. Those provisions read as follows:

Article 5 § 4

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

169. Having regard to its finding above under Article 5 § 1, and to its finding in respect of the Government's preliminary objection concerning non-exhaustion of domestic remedies, the Court considers that it is not necessary to examine separately whether, in this case, there has also been a violation of Article 5 § 4, taken alone or in conjunction with Article 14 of the Convention (see *David v. Moldova*, no. 41578/05, § 43, 27 November 2007).

4. Alleged violation of Articles 9 and 12 of the Convention

170. The applicant complained that the measures taken against her with the authorities' collusion on account of her association with MISA had prevented her from exercising her beliefs, in breach of her rights guaranteed by Articles 9 and 12 of the Convention, which read as follows:

Article 5 § 4

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Article 12

"Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

171. The Court has already found that the measures taken against the applicant were, in the circumstances of her case, unlawful and violated Articles 5 and 8 of the Convention. In view of its findings under the aforementioned Articles, the Court considers that there is no need for a separate examination under Articles 9 and 12 of the Convention.

II. COMPLAINT UNDER ARTICLE 3 OF THE CONVENTION

172. The applicant complained that the medical treatment provided to her in the Nifon Unit of the Săpoca Psychiatric Hospital had been inappropriate and had amounted to inhuman and degrading treatment in breach of Article 3 of the Convention, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Admissibility

1. The parties' submissions

173. The Government reiterated their arguments concerning the non-exhaustion of domestic remedies and the belated lodging of the applicant's application before the Court (see paragraphs 94-96 and 109 above). In addition, they contended that the applicant had not provided sufficient evidence in relation to the treatment administered to her and had not submitted any medical evidence demonstrating the alleged effects of the treatment on her physical or psychological well-being.

174. The Government submitted that the applicant had not supported her allegations by any other medical documents, the only relevant evidence adduced in the case being the clinical observation paper, which contained her diagnosis and details of the progress of her condition and her reaction to the treatment. The aforementioned paper recorded that she had suffered only from reluctance to communicate, verbal aggressiveness, constipation, daytime somnolence, emotional instability, lack of insight, dysmenorrhoea, irritability and aggressiveness. There were no medical documents indicating that the applicant had actually suffered the remaining side-effects she mentioned.

175. The applicant also reiterated her arguments against the Government's claims of non-exhaustion of domestic remedies and belated lodging of her application before the Court (see paragraphs 97-98 and 110 above). She also submitted that, according to the available medical documents, the medical treatment with Leponex that she had received during her hospitalisation in the Nifon Unit of the Săpoca Psychiatric Hospital had been inappropriate for her condition. Moreover, although treatment with the aforementioned medicine carried a major cardiac risk and had to be monitored closely, there was no evidence in the applicant's clinical observation papers that her treatment had been monitored. Moreover, the treatment had been administered in combination with other neuroleptic drugs, a practice cautioned against by medical experts in the field. Furthermore, the treatment had continued to be forcibly administered to the applicant by her family after her discharge from hospital.

176. The applicant contended that she had repeatedly complained about the medication's side-effects, including immune deficiency, and inability to procreate for a year in her complaints lodged before the domestic authorities.

2. The Court's assessment

177. The Court finds that it is not necessary to re-examine whether the applicant had exhausted the available domestic remedies or whether she had lodged her application before the Court within the allowed time-limit,

because even assuming that she had done so, the complaint is in any event inadmissible for the following reasons.

178. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (*Kudła v. Poland* [GC], no. 30210/96, §91, CEDH 2000-XI, and *Peers v. Greece*, no. 28524/95, §67, CEDH 2001-III).

179. The Court notes that while the Government did not contest that the applicant had been treated with Leponex and other neuroleptic drugs during her hospitalisation, it appears that they contested that she experienced all the side-effects that she described.

180. The Court observes that according to the available medical evidence it does not appear that the applicant suffered any of the more serious side-effects she mentioned, in particular, agranulacytosis, immune deficiency or inability to procreate for a year (see paragraph 19 above). In addition, it does not appear from the available medical evidence that the treatment had long-lasting psychological or physical effects on the applicant after her discharge from hospital.

181. While it is undisputed that the applicant received the treatment on a regular basis during her hospitalisation, that she experienced some side-effects and that, as the Court has already established, she had not consented to receiving the medication, the Court remains unconvinced in the particular circumstances of this case that the treatment in issue attained the level of severity required by Article 3 of the Convention.

182. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. OTHER COMPLAINTS

183. The applicant complained under Articles 3 and 6 of the Convention that the criminal investigations conducted following her complaints had been ineffective. Moreover, she complained under Article 5 of the Convention that she had been unlawfully deprived of her liberty while held at her grandparents' house by her family. Lastly, she complained under Articles 9 and 14, taken in conjunction with Article 6 of the Convention, that she had been unlawfully deprived of her liberty and had not enjoyed an effective investigation in respect of that issue on account of her association with MISA.

184. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, and

in so far as they fall within its jurisdiction, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

185. 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. Damage

186. The applicant claimed 92,000 euros (EUR) in respect of non-pecuniary damage.

187. The Government submitted that the amount was excessive and unjustified and that the finding of a violation would constitute sufficient just satisfaction for the applicant.

188. The Court takes the view that, as a result of the violations found, the applicant must have suffered non-pecuniary damage which cannot be made good by the mere finding of a violation.

189. Consequently, ruling on an equitable basis, the Court awards the applicant EUR 15,600 in respect of non-pecuniary damage.

B. Default interest

190. 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. *Declares* the complaints under Articles 5, 8, 9, 12 and 14, taken alone or in conjunction, admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds* that there is no need to examine the complaints under Articles 5 § 4, 9, 12 and 14 of the Convention, taken alone or in conjunction;

5. *Holds*
(a) that the respondent State is to pay the applicant EUR 15,600 (fifteen thousand six hundred euros), plus any tax that may be chargeable, 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, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention;
(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 English, and notified in writing on 16 September 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Josep Casadevall
President