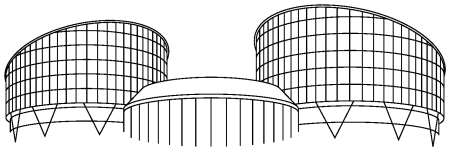

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF CENTRE FOR LEGAL RESOURCES ON BEHALF OF VALENTIN CÂMPEANU v. ROMANIA

(Application no. 47848/08)

JUDGMENT

STRASBOURG

17 July 2014

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

In the case of Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Dean Spielmann, *President*,
Guido Raimondi,
Ineta Ziemele,
Isabelle Berro-Lefèvre,
Alvina Gyulumyan,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Luis López Guerra,
Ledi Bianku,
Nona Tsotsoria,
Kristina Pardalos,
Vincent A. de Gaetano,
Angelika Nußberger,
Paulo Pinto de Albuquerque,
Paul Mahoney,
Johannes Silvis, *judges*,

and Michael O'Boyle, *Deputy Registrar*,

Having deliberated in private on 4 September 2013 and on 26 May 2014,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 47848/08) 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 non-governmental organisation, the Centre for Legal Resources ("the CLR"), on behalf of Mr Valentin Câmpeanu, on 2 October 2008.

2. Interights, acting until 27 May 2014 as adviser to counsel for the CLR, was represented by Mr C. Cojocariu, a lawyer practising in London. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, from the Ministry of Foreign Affairs.

3. The CLR alleged on behalf of Valentin Câmpeanu that the latter had been the victim of breaches of Articles 2, 3, 5, 8, 13 and 14 of the Convention.

4. On 7 June 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. Third-party comments were received from Human Rights Watch, the Euroregional Center for Public Initiatives, the Bulgarian Helsinki Committee and the Mental Disability Advocacy Center, all of which had been given leave by the President to intervene in the proceedings (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court). The Council of Europe Commissioner for Human Rights exercised his right to intervene in the proceedings and submitted written comments (Article 36 § 3 of the Convention and Rule 44 § 2).

The Government replied to those comments (Rule 44 § 5).

6. A hearing took place in public in the Human Rights Building, Strasbourg, on 4 September 2013 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Ms C. BRUMAR, *Agent*,
Mr G. CAIAN, *Counsel*,
Mr D. DUMITRACHE, *Co-Agent*;

(b) *for the CLR*
Ms G. IORGULESCU, Executive Director, CLR,
Ms G. PASCU, Programme Manager, CLR,
Mr C. COJOCARIU, Lawyer, Interights, *Counsel*;

(c) *for the Council of Europe Commissioner for Human Rights*
Mr N. MUIŽNIEKS, Commissioner for Human Rights,
Ms I. GACHET, Director, Office of the Commissioner for Human Rights,
Ms A. WEBER, Advisor, Office of the Commissioner for Human Rights.

The Court heard addresses by Ms Brumar, Mr Caian, Mr Cojocariu, Ms Iorgulescu and Mr Muižnieks. Ms Brumar, Mr Cojocariu and Ms Iorgulescu subsequently gave their answers to questions put by the Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The death of Valentin Câmpeanu

1. Factual background

7. Valentin Câmpeanu, a man of Roma ethnicity, was born on 15 September 1985. His father was unknown, and his mother, Florica Câmpeanu, who died in 2001, abandoned him at birth. Mr Câmpeanu was therefore placed in an orphanage, the Corlate Centre, where he grew up.

In 1990 Mr Câmpeanu was diagnosed as HIV-positive. He was later diagnosed with "profound intellectual disability, an IQ of 30 and HIV" and was accordingly classified as belonging to the "severe" disability group. In time, he also developed associated symptoms such as pulmonary tuberculosis, pneumonia and chronic hepatitis.

In March 1992 he was transferred to the Craiova Centre for Disabled Children and at a later moment to the Craiova no. 7 Placement Centre ("the Placement Centre").

2. Assessments 2003-2004

8. On 30 September 2003 the Dolj County Child Protection Panel ("the Panel") ordered that Mr Câmpeanu should no longer be cared for by the State. The decision was justified on the grounds that Mr Câmpeanu had recently turned eighteen and was not enrolled in any form of education at the time.

Although the social worker dealing with Mr Câmpeanu had recommended transferring him to the local Neuropsychological Recovery and Rehabilitation Centre, the Panel ordered that a competent social worker should take all measures necessary for Mr Câmpeanu to be transferred to the Poiana Mare Neuropsychiatric Hospital ("PMH"). According to the relevant law, the decision could be challenged before the Craiova District Court.

Mr Câmpeanu was not present in person and was not represented at the hearing held by the Panel.

9. On 14 October 2003 Mr Câmpeanu's health was reassessed by the Dolj County Council Disabled Adults Medical Examination Panel. The assessment resulted solely in a finding of HIV infection, corresponding to the "average" disability group. It was also mentioned that the patient was "socially integrated".

10. Subsequently, on an unspecified date in October or November 2003, a medical and welfare assessment of Mr Câmpeanu was carried out by a social worker and a doctor from the Placement Centre as a prerequisite for

his admission to a medical and social care centre. Under the heading "Legal representative" they indicated "abandoned at birth", while the space next to "Person to contact in case of emergency" was left blank. The diagnosis indicated was "severe intellectual disability, HIV-positive", without any reference to the previous diagnosis (see paragraph 9 above). The following information was included in the assessment report: "requires supervision and intermittent assistance with personal care", and the report concluded that Mr Câmpeanu was able to take care of himself, but at the same time required considerable support.

11. By letter dated 16 October 2003 the PMH informed the Panel that it could not admit Mr Câmpeanu, who had been diagnosed with HIV and mental disability, as the hospital lacked the facilities necessary to treat individuals with such a diagnosis.

12. Following this refusal, between October 2003 and January 2004 the Panel and the County Department for the Protection of the Rights of the Child ("the Child Protection Department") contacted a series of institutions, asking for assistance in identifying a social care or psychiatric establishment willing to admit Mr Câmpeanu. While stating that the PMH had refused to admit the patient because he had HIV, the Child Protection Department asked for the cooperation of the institutions concerned, mentioning that Mr Câmpeanu's condition "did not necessitate hospitalisation, but rather continuous supervision in a specialist institution".

3. Admission to the Cetate Medical and Social Care Centre

13. The Panel eventually identified the Cetate-Dolj Medical and Social Care Centre ("the CMSC") as an appropriate establishment where Valentin Câmpeanu could be placed. In its request to the CMSC, the Panel mentioned only that Mr Câmpeanu was HIV-positive, corresponding to the average disability group, without referring to his learning difficulties.

14. On 5 February 2004 Mr Câmpeanu was admitted to the CMSC. According to a report issued by the CMSC and sent to the CLR on 5 March 2004 detailing his condition upon admission, Mr Câmpeanu was in an advanced state of "psychiatric and physical degradation", dressed in a tattered tracksuit, without any underwear or shoes and without being given any antiretroviral ("ARV") medication or information concerning his medical condition. It was noted that the patient "refused to cooperate".

In her statement to the prosecutor on 22 July 2004 in the context of the domestic proceedings (described in section B below), M.V., the doctor who had treated Mr Câmpeanu at the Placement Centre, justified the failure to provide appropriate medication or information on the basis that she did not know whether, depending on the results of the most recent investigation (see paragraph 9 above), it would be necessary to modify his treatment.

A medical examination carried out upon Mr Câmpeanu's admission to the CMSC concluded that he suffered from "severe intellectual disability,

HIV infection and malnutrition". At that time, he was 168 centimetres tall and weighed 45 kilograms. It was mentioned that "he could not orient himself in time and space and he could not eat or care for his personal hygiene by himself".

15. During the evening of 6 February 2004 Mr Câmpeanu became agitated. According to the above-mentioned report by the CMSC (see paragraph 14 above), on the morning of 7 February 2004 he "became violent, assaulted other patients, broke a window and tore up a mattress and his clothes and sheets". He was given phenobarbital and then diazepam to calm him down.

4. Examination at the PMH

16. On 9 February 2004 Mr Câmpeanu was taken to the PMH for examination, diagnosis and treatment, as it was the nearest psychiatric establishment. He was again diagnosed with "severe intellectual disability". However, his condition was described as "not a psychiatric emergency", as "he was not agitated". Dr L.G. diagnosed him with "medium intellectual disability" and prescribed sedative medicines (carbamazepine and diazepam).

According to the medical records kept at the PMH, no information regarding Mr Câmpeanu's medical history could be obtained upon his admission to the hospital, as he "would not cooperate". In the statement she gave to the investigative authorities on 8 December 2005, Dr D.M. from the PMH stated that "the patient was different in that it was not possible to communicate with him and he had mental disabilities".

5. Return to the CMSC

17. Mr Câmpeanu was returned to the CMSC on the same day, by which time his health had worsened considerably. At that time, the CMSC had received a supply of ARV medication and thus his treatment with ARVs was resumed. Despite these measures, his condition did not improve, the medical records mentioning that he continued to be "agitated" and "violent".

18. The CMSC decided that because it lacked the facilities needed to treat Mr Câmpeanu's condition, it was impossible to keep him there any longer. The hospital sent a request to the Placement Centre asking it to refer him to a different establishment. However, the Placement Centre refused the request on the grounds that he was already "outside its jurisdiction".

19. On 11 February 2004 E.O., the director of the CMSC, allegedly called the Dolj County Public Health Department and asked it to come up with a solution that would allow Mr Câmpeanu to be transferred to a facility which was more suitable for the treatment of his health problems. It appears

that she was advised to transfer him to the PMH for a period of four to five days for psychiatric treatment.

6. Transfer to the PMH

20. On 13 February 2004 Mr Câmpeanu was transferred from the CMSC to the PMH, on the understanding that his stay at the PMH would last for three or four days with the purpose of attempting to provide treatment for his hyper-aggressive behaviour. He was placed in Psychiatric Department V.

21. On 15 February 2004 Mr Câmpeanu was placed under the care of Dr L.G. Given the fact that Mr Câmpeanu was HIV-positive, the doctor decided to transfer him to Psychiatric Department VI. She continued to be in charge of his psychiatric treatment, as that department had only two general, non-specialist doctors and no psychiatrists on its staff.

22. On 19 February 2004 Mr Câmpeanu stopped eating and refused to take his medication. He was therefore prescribed an intravenous treatment which included glucose and vitamins. Upon examination by the doctor, he was found to be "generally unwell".

7. Visit by staff of the CLR

23. On 20 February 2004 a team of monitors from the CLR visited the PMH and noticed Mr Câmpeanu's condition. According to the information included in a report by CLR staff on that visit, Mr Câmpeanu was alone in an isolated room, unheated and locked, which contained only a bed without any bedding. He was dressed only in a pyjama top. At the time he could not eat or use the toilet without assistance. However, the staff at the PMH refused to help him, allegedly for fear that they would contract HIV. Consequently, the only nutrition provided to Mr Câmpeanu was glucose, through a drip. The report concluded that the hospital had failed to provide him with the most basic treatment and care services.

The CLR representatives stated that they had asked for him to be immediately transferred to the Infectious Diseases Hospital in Craiova, where he could receive appropriate treatment. However, the hospital's manager had decided against that request, believing that the patient was not an "emergency case, but a social case", and that in any event he would not be able to withstand the trip.

24. Valentin Câmpeanu died on the evening of 20 February 2004. According to his death certificate, issued on 23 February 2004, the immediate cause of death was cardiorespiratory insufficiency. The certificate also noted that the HIV infection was the "original morbid condition" and designated "intellectual disability" as "another important morbid condition".

25. In spite of the legal provisions that made it compulsory to carry out an autopsy when a death occurred in a psychiatric hospital (Joint Order no. 1134/255/2000 of the Minister of Justice and the Minister of Health), the PMH did not carry out an autopsy on the body, stating that "it was not believed to be a suspicious death, taking into consideration the two serious conditions displayed by the patient" (namely intellectual disability and HIV infection).

26. Unaware of Mr Câmpeanu's death, on 21 February 2004 the CLR had drafted several urgent letters and then sent them to a number of local and central officials, including the Minister of Health, the prefect of Dolj County, the mayor of Poiana Mare and the director of the Dolj County Public Health Department, highlighting Mr Câmpeanu's extremely critical condition and the fact that he had been transferred to an institution that was unable to provide him with appropriate care, in view of his HIV infection; the CLR further criticised the inadequate treatment he was receiving and asked for emergency measures to be taken to address the situation. It further stated that Mr Câmpeanu's admission to the CMSC and subsequent transfer to the PMH had been in breach of his human rights, and urged that an appropriate investigation of the matter be launched.

On 22 February 2004 the CLR issued a press release highlighting the conditions and the treatment received by patients at the PMH, making particular reference to the case of Mr Câmpeanu and calling for urgent action.

B. The domestic proceedings

1. Criminal complaints lodged by the CLR

27. In a letter of 15 June 2004 to the Prosecutor General of Romania, the CLR requested an update on the state of proceedings following the criminal complaint it had lodged with that institution on 23 February 2004 in relation to the circumstances leading up to Valentin Câmpeanu's death; in the complaint it had emphasised that Mr Câmpeanu had not been placed in an appropriate medical institution, as required by his medical and mental condition.

28. On the same day, the CLR lodged two further criminal complaints, one with the prosecutor's office attached to the Craiova District Court and the other with the prosecutor's office attached to the Craiova County Court. The CLR repeated its request for a criminal investigation to be opened in relation to the circumstances leading up to and surrounding Mr Câmpeanu's death, alleging that the following offences had been committed:

(i) negligence, by employees of the Child Protection Department and of the Placement Centre (Article 249 § 1 of the Criminal Code);

(ii) malfeasance and nonfeasance against a person's interests and endangering a person unable to care for himself or herself, by employees of the CMSC (Articles 246 and 314 of the Criminal Code); and

(iii) homicide by negligence or endangering a person unable to care for himself or herself, by employees of the PMH (Article 178 § 2 and Article 314 of the Criminal Code).

The CLR further argued that the Medical Examination Panel had wrongly classified Mr Câmpeanu as being in the medium disability group, contrary to previous and subsequent diagnoses (see paragraph 9 above). In turn, the Child Protection Department had failed to institute proceedings for the appointment of a guardian when Mr Câmpeanu had reached the age of majority, in breach of existing legislation.

Moreover, the Placement Centre had failed to supply the required ARV medication to CMSC staff when Mr Câmpeanu had been transferred there on 5 February 2004, which might have caused his death two weeks later.

The CLR also claimed that the transfer from the CMSC to the PMH had been unnecessary, improper and contrary to existing legislation, the measure having been taken without the patient's or his representative's consent, as required by the Patients' Rights Act (Law no. 46/2003).

Lastly, the CLR argued that Mr Câmpeanu had not received adequate care, treatment or nutrition at the PMH.

29. On 22 August 2004 the General Prosecutor's Office informed the CLR that the case had been sent to the prosecutor's office attached to the Dolj County Court for investigation.

On 31 August 2004 the prosecutor's office attached to the Dolj County Court informed the CLR that a criminal file had been opened in response to its complaint, and that the investigation had been allocated to the Criminal Investigation Department of the Dolj County Police Department ("the Police Department").

2. Forensic report

30. On 14 September 2004, at the request of the prosecutor's office, a forensic report was issued by the Craiova Institute of Forensic Medicine. Based on the medical records submitted, the report concluded as follows:

> "Medical treatment was prescribed for [the patient's] HIV and his psychiatric condition, the treatment [being] correct and appropriate as to the dosage, in connection with the patient's clinical and immunological condition.
>
> It cannot be ascertained whether the patient had indeed taken his prescribed medication, having regard to his advanced state of psychosomatic degradation."

31. On 22 October 2004 Valentin Câmpeanu's body was exhumed and an autopsy carried out. A forensic report was subsequently issued on 2 February 2005, recording that the body showed advanced signs of cachexia and concluding as follows:

"... the death was not violent. It was due to cardiorespiratory insufficiency caused by pneumonia, a complication suffered during the progression of the HIV infection. Upon exhumation, no traces of violence were noticed."

3. Prosecutors' decisions

32. On 19 July 2005 the prosecutor's office attached to the Dolj County Court issued a decision not to prosecute, holding, *inter alia*, that, according to the evidence produced, the medical treatment provided to the patient had been appropriate, and that the death had not been violent, but rather had been caused by a complication which had occurred during the progression of Mr Câmpeanu's HIV infection.

33. On 8 August 2005 the CLR lodged a complaint against that decision with the Chief Prosecutor of the prosecutor's office attached to the Dolj County Court, claiming, *inter alia*, that some of the submissions it had made concerning the medical treatment given to the patient, the alleged discontinuation of the ARV treatment and the living conditions in the hospitals had not been examined.

On 23 August 2005 the Chief Prosecutor allowed the complaint, set aside the decision of 19 July 2005 and ordered the reopening of the investigation so that all aspects of the case could be examined. Specific instructions were given as to certain medical documents that needed to be examined, once they had been obtained from the Infectious Diseases Hospital in Craiova, the Placement Centre, the CMSC and the PMH. The doctors who had treated Mr Câmpeanu were to be questioned. The circumstances in which the ARV treatment had or had not been provided to the patient while he was in the CMSC and in the PMH were to be clarified, especially as the medical records at the PMH did not mention anything on that account.

34. On 11 December 2006 the prosecutor's office attached to the Dolj County Court decided that, pursuant to new procedural rules in force, it lacked jurisdiction to carry out the investigation, and referred the case file to the prosecutor's office attached to the Calafat District Court.

4. Disciplinary proceedings

35. On 11 January 2006 the Police Department asked the Dolj County Medical Association ("the Medical Association") to provide it with an opinion on "whether the therapeutic approach [adopted] was correct in view of the diagnosis [established in the autopsy report] or whether it contains indications of medical malpractice".

On 20 July 2006, the Disciplinary Board of the Medical Association ruled that there were no grounds for taking disciplinary action against staff at the PMH:

"... the psychotropic treatment, as noted in the general clinical observation notes from the PMH, was appropriate ... [and therefore] ... the information received suggests that the doctors' decisions were correct, without any suspicion of medical malpractice

[arising from] an opportunistic infection associated with HIV [being] incorrectly treated."

That decision was challenged by the Police Department, but on 23 November 2006 the challenge was rejected as out of time.

5. New decision not to prosecute and subsequent appeals

36. On 30 March 2007 the prosecutor's office attached to the Calafat District Court issued a fresh decision not to prosecute. The prosecutor relied in his reasoning on the evidence adduced in the file, as well as on the decision issued by the Disciplinary Board of the Medical Association.

37. The CLR lodged a complaint against that decision, submitting that the majority of the instructions given in the Chief Prosecutor's decision of 23 August 2005 (see paragraph 33 above) had been ignored. The complaint was dismissed by the Chief Prosecutor of the prosecutor's office attached to the Calafat District Court on 4 June 2007. The brief statement of reasons in the decision referred to the conclusions of the forensic report of 14 September 2004 and the Medical Association's decision of 20 July 2006.

On 10 August 2007 the CLR challenged that decision before the Calafat District Court.

38. On 3 October 2007 the Calafat District Court allowed the complaint, set aside the decisions of 30 March 2007 and 4 June 2007 and ordered the reopening of the investigation, holding that several aspects of Mr Câmpeanu's death had not been examined and that more evidence needed to be produced.

Among the shortcomings highlighted by the court were the following: most of the documents which were supposed to have been obtained from the Infectious Diseases Hospital in Craiova and the Placement Centre had not actually been added to the investigation file (the forensic documents on the basis of which Mr Câmpeanu had been admitted to the CMSC and transferred to the PMH; the clinical and paraclinical tests undertaken; the records of questioning of the doctors and nurses who had been responsible for Mr Câmpeanu's care; and the HIV testing guidelines). Contradictions in the statements of those involved in Mr Câmpeanu's admission to the CMSC had not been clarified, and neither had the circumstances relating to the interruption of his ARV treatment after being transferred to the PMH. In addition, the contradictory claims of medical personnel from the CMSC and the PMH regarding Mr Câmpeanu's alleged "state of agitation" had not been clarified.

The investigators had also failed to ascertain whether the medical staff at the PMH had carried out the necessary tests after Mr Câmpeanu had been admitted there and whether he had received ARVs or any other appropriate medication. The investigators had failed to establish the origin of the oedema noted on Mr Câmpeanu's face and lower limbs and whether the therapeutic approach adopted at the PMH had been correct. Given these

failures, the request for an opinion from the Medical Association had been premature and should be resubmitted once the investigation file had been completed.

39. The prosecutor's office attached to the Calafat District Court appealed against that judgment. On 4 April 2008 the Dolj County Court allowed the appeal, quashed the judgment delivered by the Calafat District Court and dismissed the CLR's complaint concerning the decision of 30 March 2007 not to prosecute.

The court mainly relied on the conclusions of the forensic report and the autopsy report, and also on the decision of the Medical Association, all of which had stated that there had been no causal link between the medical treatment given to Mr Câmpeanu and his death.

C. Other proceedings initiated by the CLR

1. In relation to Mr Câmpeanu

40. In response to the complaints lodged by the CLR (see paragraph 26 above), on 8 March 2004 the prefect of Dolj County established a commission with the task of carrying out an investigation into the circumstances surrounding Valentin Câmpeanu's death. The commission was made up of representatives of the Child Protection Department, the Public Health Department, the Criminal Investigations Department of the Police Department and the Prefect's Office. The commission was given ten days to complete the investigation and submit a report on its findings.

The commission's report concluded that all procedures relating to Mr Câmpeanu's treatment after his discharge from the Placement Centre had been lawful and justified in view of his diagnosis. The commission found only one irregularity, in that an autopsy had not been carried out immediately after Mr Câmpeanu's death, in breach of existing legislation (see paragraph 25 above).

41. On 26 June 2004 the CLR filed a complaint with the National Authority for the Protection and Adoption of Children ("the National Authority"), criticising several deficiencies concerning mainly the failure to appoint a guardian for Mr Câmpeanu and to place him in an appropriate medical institution. The CLR reiterated its complaint on 4 August 2004, submitting that the wrongful transfer of Mr Câmpeanu to the PMH could raise issues under Article 5 § 1 (e) of the Convention.

In response to those allegations, the National Authority issued a report on 21 October 2004 on the circumstances surrounding Mr Câmpeanu's death. The National Authority acknowledged that the Panel had acted *ultra vires* when ordering Mr Câmpeanu's admission to the PMH. However, it stated that in any event, the order had been of no consequence, given that the

institution had initially refused to accept Mr Câmpeanu (see paragraph 11 above).

The National Authority concluded that the Child Protection Department had acted in line with the principles of professional ethics and best practice when it had transferred Mr Câmpeanu to the CMSC. At the same time, the National Authority stated that it was not authorised to pass judgment on Mr Câmpeanu's subsequent transfer to the PMH.

Similarly, the National Authority declined to express an opinion on the allegedly wrongful categorisation of Mr Câmpeanu as belonging to the medium disability group, or on the events which had occurred after his admission to the CMSC.

42. On 24 March 2004 the Dolj County Public Health Department informed the CLR that a commission made up of various county-level officials had concluded that "no human rights were breached" in connection with Mr Câmpeanu's death, as his successive admissions to hospital had been justified by section 9 of Law no. 584/2002 on measures for the prevention of the spread of HIV infection and the protection of persons infected with HIV or suffering from AIDS.

2. In relation to other patients

43. On 16 March 2005, following a criminal investigation concerning the death of seventeen patients at the PMH, the General Prosecutor's Office sent a letter to the Ministry of Health, requiring it to take certain administrative measures to address the situation at the hospital. While noting that no criminal wrongdoing was detectable in connection with the deaths in question, the letter highlighted "administrative deficiencies" observed at the hospital and called for appropriate measures to be taken as regards the following problems:

> "lack of heating in the patients' rooms; hypocaloric food; insufficient staff, poorly trained in providing care to mentally disabled patients; lack of effective medication; extremely limited opportunities to carry out paraclinical investigations ..., all these factors having encouraged the onset of infectious diseases, as well as their fatal progression ..."

44. In a decision of 15 June 2006 concerning a criminal complaint lodged by the CLR on behalf of another patient, P.C., who had died at the PMH, the High Court of Cassation and Justice dismissed an objection by the public prosecutor that the CLR did not have *locus standi*. It found that the CLR did indeed have *locus standi* to pursue proceedings of this nature with a view to elucidating the circumstances in which seventeen patients had died at the PMH in January and February 2004, in view of its field of activity and stated aims as a foundation for the protection of human rights. The court held as follows:

> "The High Court considers that the CLR may be regarded as 'any other person whose legitimate interests are harmed' within the meaning of Article 278[1] of the Code

of Criminal Procedure. The legitimacy of its interest lies in the CLR's request that the circumstances which led to the death of seventeen patients at the PMH in January and February 2004 be determined and elucidated; its aim was thus to safeguard the right to life and the prohibition of torture and ill-treatment ... by initiating an official criminal investigation that would be effective and exhaustive so as to identify those responsible for breaches of the above-mentioned rights, in accordance with the requirements of Articles 2 and 3 of the European Convention on Human Rights. [It also aimed] to raise the awareness of society as to the need to protect fundamental human rights and freedoms and to ensure access to justice, which corresponds to the NGO's stated goals.

Its legitimate interest has been demonstrated by the initiation of investigations, which are currently pending.

At the same time, the possibility for the CLR to lodge a complaint in accordance with Article 278^{1} ... represents a judicial remedy of which the complainant availed itself, also in compliance with the provisions of Article 13 of the European Convention on Human Rights ..."

D. Expert report submitted by the CLR

45. The CLR submitted an expert opinion, dated 4 January 2012 and issued by Dr Adriaan van Es, a member of the Forensic Advisory Team and director of the International Federation of Health and Human Rights Organisations (IFHHRO), assisted by Anca Boeriu, Project Officer at the IFHHRO. The opinion was based on copies of the evidence which the CLR also submitted to the Court, including the medical records from the CMSC and the PMH.

The expert opinion referred to the "very poor, substandard, often absent or missing" medical records at the PMH and the CMSC, in which the description of Mr Câmpeanu's clinical situation was "scant". It noted that while at the PMH, the patient had never been consulted by an infectious-disease specialist. Also, contrary to Romanian law, no autopsy had taken place immediately after the patient's death.

Concerning the ARV treatment, the documents available did not provide reliable information as to whether it had been received on a continuous basis. Therefore, as a result of inappropriate treatment, Mr Câmpeanu might have suffered from a relapse of HIV, and also from opportunistic infections such as pneumocystis pneumonia (pneumonia appeared in the autopsy report as the cause of death). The opinion noted that pneumonia had not been diagnosed or treated while the patient was at the PMH or the CMSC, even though it was a very common disease in HIV patients. Common laboratory tests to monitor the patient's HIV status had never been carried out.

The expert opinion stated that certain behavioural signs interpreted as psychiatric disorders might have been caused by septicaemia.

Therefore, the risks of discontinued ARV treatment, the possibility of opportunistic infections and the patient's history of tuberculosis should have

led to Mr Câmpeanu being admitted to an infectious-disease department of a general hospital, and not to a psychiatric institution.

46. The report concluded that Mr Câmpeanu's death at the PMH had been the result of "gross medical negligence". The management of HIV and opportunistic infections had failed to comply with international standards and medical ethics, as had the counselling and treatment provided to the patient for his severe intellectual disability. Moreover, the disciplinary proceedings before the Disciplinary Board of the Medical Association had been substandard and negligent, in the absence of important medical documentation.

E. Background information concerning the Cetate and Poiana Mare medical institutions

1. Poiana Mare Neuropsychiatric Hospital

47. The PMH is located in Dolj County in southern Romania, 80 km from Craiova, on a former army base occupying thirty-six hectares of land. The PMH has the capacity to admit 500 patients, both on a voluntary and an involuntary basis, in the latter case as a result of either civil or criminal proceedings. Until a few years ago, the hospital also included a ward for patients suffering from tuberculosis. The ward was relocated to a nearby town as a result of pressure from a number of national and international agencies, including the European Committee for the Prevention of Torture ("the CPT").

At the time of the relevant events, namely in February 2004, there were 436 patients at the PMH. The medical staff included five psychiatrists, four psychiatry residents and six general practitioners.

According to the CPT's report of 2004 (see paragraph 77 below), during two consecutive winters, 109 patients died in suspicious circumstances at the PMH – eighty-one between January and December 2003 and twenty-eight in the first five months of 2004. The CPT had visited the PMH three times, in 1995, 1999 and 2004; its last visit was specifically aimed at investigating the alarming increase in the death rate. After each visit, the CPT issued very critical reports, highlighting the "inhuman and degrading living conditions" at the PMH.

Following a visit to several of the medical institutions indicated as problematic in the CPT's reports, among them the PMH, the Ministry of Health issued a report on 2 September 2003. It concluded that at the PMH, the medication provided to patients was inadequate, either because there was no link between the psychiatric diagnosis and the treatment provided, or because the medical examinations were very limited. Several deficiencies were found concerning management efficiency and the insufficient number of medical staff in relation to the number of patients.

2. Cetate Medical and Social Care Centre

48. It appears from the information received from the CLR that the CMSC was a small centre for medical and social care, with a capacity of twenty beds at the beginning of 2004; at the time, there were eighteen patients at the CMSC. Before 1 January 2004 – when it was designated as a medical and social care centre – the CMSC was a psychiatric hospital.

According to its accreditation certificate for 2006-2009, the CMSC was authorised to provide services for adults experiencing difficult family situations, with an emphasis on the social component of medical and social care.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Romanian Criminal Code

49. The relevant parts of the Romanian Criminal Code as in force at the time of the impugned events read as follows:

Article 114 – Admission to a medical facility

"(1) When an offender is mentally ill or a drug addict and is in a state that presents a danger to society, his or her admission to a specialist medical institution may be ordered until he or she returns to health.

(2) This measure may also be taken temporarily during a criminal prosecution or trial."

Article 178 – Negligent homicide

"(2) Negligent homicide as a result of failure to observe legal provisions or preventive measures relating to the practice of a profession or trade, or as a result of the performance of a particular activity, shall be punishable by immediate imprisonment for two to seven years."

Article 246 – Malfeasance and nonfeasance against a person's interests

"A public servant who, in the exercise of official duties, knowingly fails to perform an act or performs it erroneously and in doing so infringes another person's legal interests shall be punishable by immediate imprisonment for six months to three years."

Article 249 – Negligence in the performance of an official duty

"(1) The breach of an official duty, as a result of negligence on the part of a public servant, by failing to perform it or performing it erroneously, if such breach has caused significant disturbance to the proper operation of a public authority or institution or of a legal entity, or damage to its property or serious damage to another person's legal interests, shall be punishable by imprisonment for one month to two years or by a fine."

Article 314 – Endangering a person unable to look after himself or herself

"(1) The act of abandoning, sending away or leaving helpless a child or a person unable to look after himself or herself, committed in any manner by a person entrusted with his or her supervision or care, [or of] placing his or her life, health or bodily integrity in imminent danger, shall be punishable by immediate imprisonment for one to three years..."

B. Romanian Code of Criminal Procedure

50. The procedure governing complaints lodged with a court against decisions taken by a prosecutor during criminal investigations was set out in Articles 275-278[1] of the Code as in force at the time of the impugned events. The relevant parts of these Articles read as follows:

Article 275

"Any person may lodge a complaint in respect of measures and decisions taken during criminal investigation proceedings, if these have harmed his or her legitimate interests ..."

Article 278

"Complaints against measures or decisions taken by a prosecutor or implemented at the latter's request shall be examined by ... the chief prosecutor in the relevant department. ..."

Article 278[1]

"(1) Following the dismissal by the prosecutor of a complaint lodged in accordance with Articles 275-278 in respect of the discontinuation of a criminal investigation ... through a decision not to prosecute (*neurmărire penală*) ..., the injured party, or any other person whose legitimate interests have been harmed, may complain within twenty days following notification of the impugned decision, to the judge of the court that would normally have jurisdiction to deal with the case at first instance. ...

(4) The person in respect of whom the prosecutor has decided to discontinue the criminal investigation, as well as the person who lodged the complaint against that decision, shall be summoned before the court. If they have been lawfully summoned, the failure of these persons to appear before the court shall not impede the examination of the case. ...

(5) The presence of the prosecutor before the court is mandatory.

(6) The judge shall give the floor to the complainant, and then to the person in respect of whom the criminal investigation has been discontinued, and finally, to the prosecutor.

(7) In the examination of the case, the judge shall assess the impugned decision on the basis of the existing acts and material, and on any new documents submitted.

(8) The judge shall rule in one of the following ways:

(a) dismiss the complaint as out of time, inadmissible or ill-founded and uphold the decision;

(b) allow the complaint, overturn the decision and send the case back to the prosecutor in order to initiate or reopen the criminal investigation. The judge shall be required to give reasons for such remittal and, at the same time, to indicate the facts and circumstances that require elucidation, as well as the relevant evidence that needs to be produced;

(c) allow the complaint, overturn the decision and, when the evidence in the file is sufficient, retain the case for further examination, in compliance with the rules of procedure that apply at first instance and, as appropriate, on appeal. ...

(12) The judge shall examine the complaint within thirty days from the date of receipt.

(13) A complaint lodged with the incorrect body shall be sent, as an administrative step, to the body with jurisdiction to examine it."

C. Social assistance system

51. Section 2 of the National Social Assistance Act (Law no. 705/2001), as in force at the relevant time, defines the social assistance system as follows:

"... the system of institutions and measures through which the State, the public authorities and civil society ensure the prevention, the limitation or the removal of the temporary or permanent consequences of situations that may cause the marginalisation or social exclusion of some individuals."

Section 3 defines the scope of the social assistance system, which is:

"... to protect individuals who, for economic, physical, mental or social reasons, do not have the ability to meet their social needs and to develop their own capabilities and social integration skills."

52. Ordinance no. 68/2003 concerning social services identifies the objectives of State social services and details the decision-making process concerning the allocation of social services.

D. Legislation regarding the health system

53. A detailed description of the relevant legal provisions on mental health is to be found in *B. v. Romania (no. 2)* (no. 1285/03, §§ 42-66, 19 February 2013).

Law no. 487/2002 on Mental Health and the Protection of People with Psychological Disorders ("the Mental Health Act 2002"), which came into force in August 2002, prescribes the procedure for compulsory treatment of an individual. A special psychiatric panel should approve a treating psychiatrist's decision that a person remain in hospital for compulsory treatment within seventy-two hours of his or her admission to a hospital. In addition, this assessment should be reviewed within twenty-four hours by a public prosecutor, whose decision, in turn, may be appealed against to a court. The implementation of the provisions of the Act was dependent on

the adoption of the necessary regulations for its enforcement. The regulations were adopted on 2 May 2006.

54. The Hospitals Act (Law no. 270/2003) provided in section 4 that hospitals had an obligation to "ensure the provision of adequate accommodation and food and the prevention of infections". It was repealed on 28 May 2006, once the Health Care Reform Act 2006 (Law no. 95/2006) came into force.

55. The Patients' Rights Act (Law no. 46/2003) provides in section 3 that "the patient shall be entitled to respect as a human being, without discrimination". Section 35 provides that a patient has "the right to continuous medical care until his or her health improves or he or she recovers". Furthermore, "the patient has the right to palliative care in order to be able to die in dignity". The patient's consent is required for any form of medical intervention.

56. Order no. 1134/25.05.2000, issued by the Minister of Justice, and Order no. 255/4.04.2000, issued by the Minister of Health, approved the rules on procedures relating to medical opinions and other forensic medical services, which provide in Article 34 that an autopsy should be conducted when a death occurs in a psychiatric hospital. Article 44 requires the management of medical establishments to inform the criminal investigation authorities, who must request that an autopsy be carried out.

57. Law no. 584/2002 on measures for the prevention of the spread of HIV infection and the protection of persons infected with HIV or suffering from AIDS provides in section 9 that medical centres and doctors must hospitalise such individuals and provide them with appropriate medical care in view of their specific symptoms.

E. The guardianship system

1. Guardianship of minors

58. Articles 113 to 141 of the Family Code, as in force at the time of the events in question, regulated guardianship of a minor whose parents were dead, unknown, deprived of their parental rights, incapacitated, missing or declared dead by a court. The Family Code regulated the conditions making guardianship necessary, the appointment of a guardian (*tutore*), the responsibilities of the guardian, the dismissal of the guardian, and the end of guardianship. The institution with the widest range of responsibilities in this field was the guardianship authority (*autoritatea tutelară*), entrusted, *inter alia*, with supervision of the activity of guardians.

At present, guardianship is governed by Articles 110 to 163 of the Civil Code. The new Civil Code was published in Official Gazette no. 511 of 24 July 2009 and subsequently republished in Official Gazette no. 505 of 15 July 2011. It came into force on 1 October 2011.

2. *The incapacitation procedure and guardianship of people with disabilities*

59. Articles 142 to 151 of the Family Code, as in force at the time of the facts of the present case, governed the procedure of incapacitation (*interdicţie*), whereby a person who has proved to be incapable of managing his or her affairs loses his or her legal capacity.

An incapacitation order could be made and revoked by a court in respect of "those lacking the capacity to take care of their interests because of mental disorder or disability". Incapacitation proceedings could be initiated by a wide group of persons, among which were the relevant State authorities for the protection of minors, or any interested person. Once a person was incapacitated, a guardian was appointed to represent him or her, with powers similar to those of a guardian of a minor.

Although the incapacitation procedure could also be applied to minors, it was particularly geared towards disabled adults.

The above-mentioned provisions have since been included, with amendments, in the Civil Code (Articles 164 to 177).

60. Articles 152-157 of the Family Code, as in force at the material time, prescribed the procedure for temporary guardianship (*curatela*), designed to cover the situation of those who, even if not incapacitated, are not able to protect their interests in a satisfactory manner or to appoint a representative. The relevant parts of these provisions read as follows:

Article 152

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

(a) where, on account of old age, illness or physical infirmity, a person, even if he or she retains legal capacity, is unable personally to manage his or her goods or to satisfactorily defend his or her interests and, for good reasons, cannot appoint a representative;

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

(c) where, because of illness or other reasons, the parent or the appointed guardian (*tutore*) is unable to perform the act in question; ..."

Article 153

"In the situations referred to in Article 152, the appointment of a temporary guardian (*curator*) does not affect the capacity of the person represented by the guardian."

Article 154

"(1) Temporary guardianship (*curatela*) may be instituted at the request of the person who wishes to be represented, that person's spouse or relatives, any of the persons referred to in Article 115, or the guardian (*tutore*) in the situation referred to

in Article 152 (c). The guardianship authority may also institute the guardianship of its own motion.

(2) The guardianship may only be instituted with the consent of the person to be represented, except in situations when such consent cannot be given. ...”

Article 157

“If the reasons that led to the institution of temporary guardianship have ceased, the measure shall be lifted by the guardianship authority at the request of the guardian, the person being represented or any of the persons referred to in Article 115, or of its own motion.”

The above-mentioned provisions have since been included, with amendments, in the Civil Code (Articles 178 to 186).

61. Emergency Ordinance no. 26/1997 regarding children in difficult situations, in force at the time of the events in question, derogated from the provisions on guardianship in the Family Code. Article 8 (1) of the Ordinance provided:

“... if the parents of the child are dead, unknown, incapacitated, declared dead by a court, missing or deprived of their parental rights, and if guardianship has not been instituted, if the child has been declared abandoned by a final court judgment, and if a court has not decided to place the child with a family or an individual in accordance with the law, parental rights shall be exercised by the County Council, ... through [its Child Protection] Panel”.

Emergency Ordinance no. 26/1997 was repealed on 1 January 2005, when new legislation concerning the protection and promotion of children’s rights (Law no. 272/2004) came into force.

62. Order no. 726/2002, concerning the criteria on the basis of which the categories of disability for adults were established, described people with “severe intellectual disability” as follows:

“they have reduced psychomotor development and little or no language skills; they can learn to talk; they can become familiar with the alphabet and basic counting. They may be capable of carrying out simple tasks under strict supervision. They can adapt to living in the community in care homes or in their families, as long as they do not have another disability which necessitates special care.”

63. Law no. 519/2002 on the special protection and employment of people with disabilities listed the social rights to which people with disabilities were entitled. It was repealed by the Protection of People with Disabilities Act (Law no. 448/2006), which came into force on 21 December 2006. Section 23 of the Act, as initially in force, provided that people with disabilities were protected against negligence and abuse, including by means of legal assistance services and, if necessary, by being placed under guardianship. Under section 25 of the Act as amended in 2008, people with disabilities are protected against negligence and abuse, and against any discrimination based on their location. People who are entirely or partially incapable of managing their affairs are afforded legal protection

in the form of full or partial guardianship, as well as legal assistance. Furthermore, if a person with disabilities does not have any parents or any other person who might agree to act as his or her guardian, a court may appoint as guardian the local public authority or private-law entity that provides care for the person concerned.

III. RELEVANT INTERNATIONAL LAW MATERIAL

A. The issue of *locus standi*

1. *United Nations Convention on the Rights of Persons with Disabilities ("the CRPD"), adopted by the United Nations General Assembly on 13 December 2006 (Resolution A/RES/61/106)*

64. The CRPD, designed to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities and to promote respect for their inherent dignity, was ratified by Romania on 31 January 2011. It reads in its relevant parts as follows:

Article 5 – Equality and non-discrimination

"1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve *de facto* equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention."

Article 10 – Right to life

"States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others."

Article 12 – Equal recognition before the law

"1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests. ..."

Article 13 – Access to justice

"1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff."

2. Relevant Views of the United Nations Human Rights Committee

65. The First Optional Protocol to the International Covenant on Civil and Political Rights gives the Human Rights Committee ("the HRC") competence to examine individual complaints with regard to alleged violations of the Covenant by States Parties to the Protocol (Articles 1 and 2 of the Optional Protocol). This expressly limits to individuals the right to submit a communication. Therefore, complaints submitted by NGOs, associations, political parties or corporations on their own behalf have generally been declared inadmissible for lack of personal standing (see, for instance, *Disabled and handicapped persons in Italy v. Italy* (communication no. 163/1984)).

66. In exceptional cases, a third party may submit a communication on behalf of a victim. A communication submitted by a third party on behalf of an alleged victim can only be considered if the third party can demonstrate its authority to submit the communication. The alleged victim may appoint a representative to submit the communication on his or her behalf.

67. A communication submitted on behalf of an alleged victim may also be accepted when it appears that the individual in question is unable to submit the communication personally (see Rule 96 of the Rules of Procedure of the HRC):

Rule 96

"With a view to reaching a decision on the admissibility of a communication, the Committee, or a working group established under rule 95, paragraph 1, of these rules shall ascertain:

...

(b) That the individual claims, in a manner sufficiently substantiated, to be a victim of a violation by that State party of any of the rights set forth in the Covenant. Normally, the communication should be submitted by the individual personally or by that individual's representative; a communication submitted on behalf of an alleged victim may, however, be accepted when it appears that the individual in question is unable to submit the communication personally;..."

68. Typical examples of this situation would be when the victim has allegedly been abducted, has disappeared or there is no other way of knowing his or her whereabouts, or the victim is imprisoned or in a mental institution. A third party (normally close relatives) may submit a communication on behalf of a deceased person (see, for instance, *Mr Saimijon and Mrs Malokhat Bazarov v. Uzbekistan* (communication no. 959/2000); *Panayote Celal v. Greece* (communication no. 1235/2003); *Yuliya Vasilyevna Telitsina v. Russian Federation* (communication no. 888/1999); *José Antonio Coronel et al. v. Colombia* (communication no. 778/1997); and *Jean Miango Muiyo v. Zaire* (communication no. 194/1985)).

3. The United Nations Special Rapporteur on Disability

69. In her report on the question of monitoring, issued in 2006, the Special Rapporteur stated:

"2. People with developmental disabilities are particularly vulnerable to human rights violations. Also, people with disabilities are rarely taken into account, they have no political voice and are often a sub group of already marginalized social groups, and therefore, have no power to influence governments. They encounter significant problems in accessing the judicial system to protect their rights or to seek remedies for violations; and their access to organizations that may protect their rights is generally limited. While non-disabled people need independent national and international bodies to protect their human rights, additional justifications exist for ensuring that people with disabilities and their rights be given special attention through independent national and international monitoring mechanisms."

4. Relevant case-law of the Inter-American Commission on Human Rights

70. Article 44 of the American Convention on Human Rights gives the Inter-American Commission on Human Rights the competence to receive petitions from any person or group of persons, or any non-governmental entity legally recognised in one or more member states of the Organization of American States (OAS). It provides:

"Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party."

Article 23 of the Rules of Procedure of the Inter-American Commission on Human Rights states that such petitions may be brought on behalf of third parties. It reads as follows:

> "Any person or group of persons or nongovernmental entity legally recognized in one or more of the Member States of the OAS may submit petitions to the Commission, on their behalf or on behalf of third persons, concerning alleged violations of a human right recognized in, as the case may be, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights 'Pact of San José, Costa Rica' ..., in accordance with their respective provisions, the Statute of the Commission, and these Rules of Procedure. The petitioner may designate an attorney or other person to represent him or her before the Commission, either in the petition itself or in a separate document."

71. The Inter-American Commission has examined cases brought by NGOs on behalf of direct victims, including disappeared or deceased persons. For instance, in the case of *Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil* (report no. 33/01), the petitioner was the Center for Justice and International Law, acting in the name of disappeared persons and their next-of-kin. Regarding its competence *ratione personae*, the Commission acknowledged that the petitioning entity could lodge petitions on behalf of the direct victims in the case, in accordance with Article 44 of the American Convention on Human Rights. In *Teodoro Cabrera Garcia and Rodolfo Montiel Flores v. Mexico* (report no. 11/04), the Commission affirmed its jurisdiction *ratione personae* to examine claims brought by different organisations and individuals alleging that two other individuals had been illegally detained and tortured, and imprisoned following an unfair trial. In *Escher et al. v. Brazil* (report no. 18/06), the Commission affirmed its jurisdiction *ratione personae* to examine a petition brought by two associations (the National Popular Lawyers' Network and the Center for Global Justice) alleging violations of the rights to due legal process, to respect for personal honour and dignity, and to recourse to the courts, to the detriment of members of two cooperatives associated with the Landless Workers' Movement, through the illegal tapping and monitoring of their telephone lines.

72. Cases initially brought by non-governmental organisations (NGOs) may subsequently be submitted by the Commission to the Inter-American Court of Human Rights, after the adoption of the Commission's report on the merits (see, for instance, *Case of the "Las Dos Erres" Massacre v. Guatemala*, brought by the Office of Human Rights of the Archdiocese of Guatemala and the Center for Justice and International Law; see also *Escher et al. v. Brazil*).

5. European Union Agency for Fundamental Rights ("FRA") report: Access to justice in Europe: an overview of challenges and opportunities

73. The report issued by the FRA in March 2011 emphasises that the ability to seek effective protection of the rights of vulnerable people at the domestic level is often hindered, *inter alia*, by legal costs and a narrow construction of legal standing (see pages 37-54 of the report).

B. Relevant reports concerning the conditions at the PMH

1. European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) reports on Romania

74. The CPT has documented the situation at the PMH during three visits: in 1995, 1999 and 2004.

75. In 1995 the living conditions at the PMH were considered to be so deplorable that the CPT decided to make use of Article 8 § 5 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which enables it in exceptional circumstances to make certain observations to the Government concerned during the visit itself. In particular, the CPT noted that in a period of seven months in 1995 sixty-one patients had died, of whom twenty-one had been "severely malnourished" (see paragraph 177 of the 1995 report). The CPT decided to ask the Romanian Government to take urgent measures to ensure that "basic living conditions" existed at the PMH.

Other areas of concern identified by the CPT on this occasion were the practice of secluding patients in isolation rooms as a form of punishment, and the lack of safeguards in relation to involuntary admission.

76. In 1999 the CPT returned to the PMH. The most serious deficiencies found on this occasion related to the fact that the number of staff – both specialised and auxiliary – had been reduced from the 1995 levels, and to the lack of progress in relation to involuntary admission.

77. In June 2004 the CPT visited the PMH for the third time, this time in response to reports concerning an increase in the number of patients who had died. At the time of the visit, the hospital, with a capacity of 500 beds, accommodated 472 patients, of whom 246 had been placed there on the basis of Article 114 of the Romanian Criminal Code (compulsory admission ordered by a criminal court).

The CPT noted in its report that eighty-one patients had died in 2003 and twenty-eight in the first five months of 2004. The increase in the number of deaths had occurred despite the transfer from the hospital in 2002 of patients suffering from active tuberculosis. The main causes of death were cardiac arrest, myocardial infarction and bronchopneumonia.

The average age of the patients who had died was fifty-six, with sixteen being less than forty years old. The CPT stated that "such premature deaths could not be explained exclusively on the basis of the symptoms of the patients at the time of their hospitalisation" (see paragraph 13 of the 2004 Report). The CPT also noted that some of these patients "were apparently not given sufficient care" (paragraph 14).

The CPT noted with concern "the paucity of human and material resources" available to the hospital (paragraph 16). It singled out serious deficiencies in the quality and quantity of food provided to the patients and the lack of heating in the hospital.

In view of the deficiencies found at the PMH, the CPT made the following statement in paragraph 20 of the report:

> "... we cannot rule out the possibility that the combined impact of difficult living conditions – in particular the shortages of food and heating – resulted in the progressive deterioration of the general state of health of some of the weakest patients, and that the paucity of medical supplies available could not prevent their death in most cases.
>
> In the opinion of the CPT, the situation found at the Poiana Mare Hospital is very concerning and warrants taking strong measures aimed at improving the living conditions and also the care provided to patients. Following the third visit of the CPT to the Poiana Mare Hospital in less than ten years, it is high time the authorities finally grasped the real extent of the situation prevailing in the establishment."

Finally, in relation to involuntary admission through civil proceedings, the CPT noted that the recently enacted Mental Health Act 2002 had not been implemented comprehensively, as it had encountered patients who had been admitted involuntarily in breach of the safeguards included in the law (paragraph 32).

2. The United Nations Special Rapporteur on the Right to Health

78. On 2 March 2004 the Special Rapporteur on the Right to Health, together with the UN Special Rapporteur on the Right to Food and the UN Special Rapporteur on Torture, wrote to the Romanian Government, expressing concern about alarming reports received with regard to the living conditions at the PMH and asking for clarification on the matter. The response from the Government was as follows (see summary by the Special Rapporteur on the Right to Health in UN document E/CN.4/2005/51/Add.1):

> "54. By letter dated 8 March 2004, the Government responded to the communication sent by the Special Rapporteur regarding the situation of the **Poiana Mare Psychiatric Hospital**. The Government confirmed that the Romanian authorities fully understood and shared the concerns about the hospital. Ensuring the protection of handicapped persons remained a governmental priority and the Ministry of Health would start inquiries into all similar medical institutions in order to make sure Poiana Mare was an isolated case. Regarding Poiana Mare, immediate measures had been taken to improve the living conditions of the patients and these steps would

continue until the hospital was completely rehabilitated. On 25 February 2004, the Minister of Health conducted an enquiry into Poiana Mare. There were deficiencies with the heating and water systems, food preparation, waste disposal, living and sanitary conditions, and medical assistance. Most of the problems connected with medical assistance were caused by the insufficiency of resources and bad management. The Government confirmed that the following measures were required: clarification by forensic specialists of the cause of death of those patients whose death was unrelated to pre-existing disease or advanced age; implementing the hospital's plan of 2004; hiring supplementary specialized health professionals; reorganizing the working schedule of physicians to include night shifts; ensuring specialized medical assistance on a regular basis; and allocating supplementary funding to improve living conditions. The Government also confirmed that the Secretary of State of the Ministry of Health, as well as the Secretary of State of the National Authority for Handicapped Persons, had been discharged following the irregularities found at the Poiana Mare Psychiatric Hospital, and that the Director of the Hospital had been replaced by an interim director until a competitive selection for the vacant position was finalized. The Government confirmed that the hospital would be carefully monitored by representatives of the Ministry of Health throughout 2004 and that representatives of the local administration would be directly involved in improving the situation at the hospital. Finally, the Government confirmed that the Ministry of Health would start very soon an independent investigation of all other similar units, and would take all necessary measures to prevent any such unfortunate situations from ever happening again."

During his official visit to Romania in August 2004, the Special Rapporteur on the Right to Health inspected several mental health facilities, including the PMH. The report following the visit of the Special Rapporteur, issued on 21 February 2005, reads as follows, in so far as relevant:

"61. Nonetheless, during his mission the Special Rapporteur formed the view that, despite the legal and policy commitments of the Government, the enjoyment of the right to mental health care remains more of an aspiration rather than a reality for many people with mental disabilities in Romania.

Poiana Mare Psychiatric Hospital

...

63. During his mission, the Special Rapporteur had the opportunity to visit PMH and to discuss developments which had taken place since February 2004 and the appointment of a new director of the hospital. The director informed the Special Rapporteur that funding (5.7 billion lei) had been received from the Government to make improvements. Food allocations had been increased, the heating system had been repaired, and wards and other buildings at the hospital were being refurbished. While the Special Rapporteur welcomes these improvements and commends all those responsible, he urges the Government to ensure that it provides adequate resources to support the implementation of these changes on a sustainable basis. The Government should also support other needed measures including: making appropriate medication available, providing adequate rehabilitation for patients, ensuring that patients are able to access effective complaint mechanisms, and the provision of human rights training for hospital staff. The Special Rapporteur understands that criminal investigations into the deaths are still ongoing. He will continue to closely monitor all developments at

PMH. The Special Rapporteur takes this opportunity to acknowledge the important role that the media and NGOs have played in relation to Poiana Mare."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2, 3 AND 13 OF THE CONVENTION

79. The CLR, acting on behalf of Mr Câmpeanu, complained that he had been unlawfully deprived of his life as a result of the combined actions and failures to act by a number of State agencies, in contravention of their legal obligation to provide him with care and treatment. In addition, the authorities had failed to put in place an effective mechanism to safeguard the rights of people with disabilities placed in long-stay institutions, including by initiating investigations into suspicious deaths.

Furthermore, the CLR complained that serious flaws in Mr Câmpeanu's care and treatment at the CMSC and the PMH, the living conditions at the PMH, and the general attitude of the authorities and individuals involved in his care and treatment over the last months of his life, together or separately amounted to inhuman and degrading treatment. In addition, the official investigation into those allegations of ill-treatment had not complied with the State's procedural obligation under Article 3.

Under Article 13 taken in conjunction with Articles 2 and 3, the CLR submitted that no effective remedy existed in the Romanian domestic legal system in respect of suspicious deaths and/or ill-treatment in psychiatric hospitals.

Articles 2, 3 and 13 of the Convention read as follows, in so far as relevant:

Article 2

"1. Everyone's right to life shall be protected by law. ..."

Article 3

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

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

80. The Government contended that the CLR did not have *locus standi* to lodge the present application on behalf of the late Valentin Câmpeanu; the case was therefore inadmissible as incompatible *ratione personae* with the provisions of Article 34 of the Convention, which reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

1. Submissions to the Court

(a) The Government

81. The Government argued that the conditions required by Article 34 for an application to the Court were not met in the present case; on the one hand, the CLR did not have victim status and on the other hand, the association had not shown that it was the valid representative of the direct victim.

Being aware of the dynamic and evolving interpretation of the Convention by the Court in its case-law, the Government nevertheless underlined that while judicial interpretation was permissible, any sort of legislating by the judiciary, by adding to the text of the Convention, was not acceptable; therefore, Article 34 should still be construed as meaning that the subjects of the individual petition could only be individuals, NGOs or groups of individuals claiming to be victims, or representatives of alleged victims.

82. The Government disputed that the CLR could be regarded either as a direct victim, or as an indirect or potential victim.

Firstly, in the present case the CLR had not submitted that its own rights had been violated, and therefore it could not be regarded as a direct victim (the Government cited *Čonka and Others and the Human Rights League v. Belgium* (dec.), no. 51564/99, 13 March 2001).

Secondly, according to the Court's case-law, an indirect or potential victim had to demonstrate, with sufficient evidence, either the existence of a risk of a violation, or the effect that a violation of a third party's rights had had on him or her, as a consequence of a pre-existing close link, whether natural (for example, in the case of a family member) or legal (for example, as a result of custody arrangements). The Government therefore submitted that the mere fact that Mr Câmpeanu's vulnerable personal circumstances had come to the attention of the CLR, which had then decided to bring his case before the domestic courts, was not sufficient to transform the CLR into an indirect victim; in the absence of any strong link between the direct victim and the CLR, or of any decision entrusting the CLR with the task of

representing or caring for Mr Câmpeanu, the CLR could not claim to be a victim, either directly or indirectly, and this notwithstanding Mr Câmpeanu's undisputed vulnerability, or the fact that he was an orphan and had had no legal guardian appointed (the Government referred, by way of contrast, to *Becker v. Denmark*, no. 7011/75, Commission decision of 3 October 1975).

83. Furthermore, in the lack of any evidence of any form of authorisation, the CLR could not claim to be the direct victim's representative either (the Government cited *Skjoldager v. Sweden*, no. 22504/93, Commission decision of 17 May 1995).

The Government argued that the CLR's involvement in the domestic proceedings concerning the death of Mr Câmpeanu did not imply an acknowledgment by the national authorities of its *locus standi* to act on behalf of the direct victim. The CLR's standing before the domestic courts was that of a person whose interests had been harmed by the prosecutor's decision, and not that of a representative of the injured party. In that respect, the domestic law, as interpreted by the Romanian High Court of Cassation and Justice in its decision of 15 June 2006 (see paragraph 44 above), amounted to an acknowledgment of an *actio popularis* in domestic proceedings.

84. The Government argued that the present case before the Court should be dismissed as an *actio popularis*, observing that such cases were accepted by the Court solely in the context of Article 33 of the Convention in relation to the power of States to supervise one another. While noting that other international bodies did not expressly preclude an *actio popularis* (citing Article 44 of the American Convention on Human Rights), the Government maintained that each mechanism had its own limits, shortcomings and advantages, the model adopted being exclusively the result of negotiations between the Contracting Parties.

85. The Government further maintained that the Romanian authorities had addressed the specific recommendations of the CPT, with the result that a 2013 UN Universal Periodic Review had acknowledged positive developments concerning the situation of persons with disabilities in Romania. Further improvements had also been made concerning the domestic legislation on guardianship and protection of persons with disabilities.

Moreover, in so far as several of the Court's judgments had already addressed the issue of the rights of vulnerable patients placed in large-scale institutions (the Government cited *C.B. v. Romania*, no. 21207/03, 20 April 2010, and *Stanev v. Bulgaria* [GC], no. 36760/06, ECHR 2012), the Government argued that no particular reason relating to respect for human rights as defined in the Convention required that the examination of the application be pursued.

(b) The CLR

86. The CLR submitted that the exceptional circumstances of this application required an examination on the merits; the Court could make such an assessment either by accepting that the CLR was an indirect victim, or by considering that the CLR was acting as Mr Câmpeanu's representative.

87. In view of the Court's principle of flexible interpretation of its admissibility criteria when this was required by the interests of human rights and by the need to ensure practical and effective access to proceedings before it, the CLR submitted that its *locus standi* to act on behalf of Mr Câmpeanu should be accepted by the Court. In such a decision, regard should be had to the exceptional circumstances of the case, to the fact that it was impossible for Mr Câmpeanu to have access to justice, either directly or through a representative, to the fact that the domestic courts had acknowledged the CLR's standing to act on his behalf and, last but not least, to the CLR's long-standing expertise in acting on behalf of people with disabilities.

The CLR further mentioned that the Court had adapted its rules in order to enable access to its proceedings for victims who found it excessively difficult, or even impossible, to comply with certain admissibility criteria, owing to factors outside their control but linked to the violations complained of: evidentiary difficulties for victims of secret surveillance measures, or vulnerability due to such factors as age, gender or disability (citing, for instance, *S.P., D.P. and A.T. v. the United Kingdom*, no. 23715/94, Commission decision of 20 May 1996; *Storck v. Germany*, no. 61603/00, ECHR 2005-V; and *Öcalan v. Turkey* [GC], no. 46221/99, ECHR 2005-IV).

The Court had also departed from the "victim status" rule on the basis of the "interests of human rights", holding that its judgments served not only to decide the cases brought before it, but more generally, "to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties" (the CLR referred to *Karner v. Austria*, no. 40016/98, § 26, ECHR 2003-IX).

The CLR further submitted that the State had certain duties under Article 2, for instance, irrespective of the existence of next-of-kin or their willingness to pursue proceedings on the applicant's behalf; furthermore, to make the supervision of States' compliance with their obligations under Article 2 conditional on the existence of next-of-kin would entail the risk of disregarding the requirements of Article 19 of the Convention.

88. The CLR referred to the international practice of the Inter-American Commission on Human Rights and the African Commission on Human and Peoples' Rights, which in exceptional circumstances allowed cases lodged by others on behalf of alleged victims if the victims were unable to submit

the communication by themselves. NGOs were among the most active human rights defenders in such situations; furthermore, their standing to take cases to court on behalf of or in support of such victims was commonly accepted in many Council of Europe member States (according to a 2011 report by the European Union's Fundamental Rights Agency entitled *Access to Justice in Europe: An Overview of Challenges and Opportunities*).

89. Turning to the particularities of the present case, the CLR underlined that a significant factor in the assessment of the *locus standi* issue was that its monitors had established brief visual contact with Mr Câmpeanu during their visit to the PMH and witnessed his plight; consequently, the CLR had taken immediate action and applied to various authorities, urging them to provide solutions to his critical situation. In this context, the association's long-standing expertise in defending the human rights of people with disabilities played an essential role.

Pointing out that at domestic level its *locus standi* was acknowledged, the CLR contended that the Court frequently took into account domestic procedural rules on representation in order to decide who had *locus standi* to lodge applications on behalf of people with disabilities (it cited *Glass v. the United Kingdom*, no. 61827/00, ECHR 2004-II). Moreover, the Court had found violations in cases when domestic authorities had applied procedural rules in an inflexible manner that restricted access to justice for people with disabilities (for example, *X and Y v. the Netherlands*, 26 March 1985, Series A no. 91).

In this context, the CLR argued that the initiatives it had taken before the domestic authorities essentially differentiated it from the applicant NGO in the recent case of *Nencheva and Others v. Bulgaria* (no. 48609/06, 18 June 2013), concerning the death of fifteen children and young people with disabilities in a social care home. In that case, while observing in general that exceptional measures could be required to ensure that people who could not defend themselves had access to representation, the Court had noted that the Association for European Integration and Human Rights had not previously pursued the case at domestic level. The Court had therefore dismissed the application as incompatible *ratione personae* with the provisions of the Convention in respect of the NGO in question (ibid., § 93).

90. Referring to the comments by the Council of Europe Commissioner for Human Rights highlighting the difficulties that people with disabilities had in securing access to justice, and also to concerns expressed by the United Nations Special Rapporteur on Torture that practices of abuse against people with disabilities secluded in State institutions often "remained invisible", the CLR submitted that the "interests of human rights" would require an assessment of the present case on the merits.

The CLR further indicated a few criteria that it considered useful for the determination of *locus standi* in cases similar to the present one: the vulnerability of the victim, entailing a potential absolute inability to complain; practical or natural obstacles preventing the victim from exhausting domestic remedies, such as deprivation of liberty or inability to contact a lawyer or next-of-kin; the nature of the violation, especially in the case of Article 2, where the direct victim was *ipso facto* not in a position to provide a written form of authority to third parties; the lack of adequate alternative institutional mechanisms ensuring effective representation for the victim; the nature of the link between the third party claiming *locus standi* and the direct victim; favourable domestic rules on *locus standi*; and whether the allegations raised serious issues of general importance.

91. In the light of the above-mentioned criteria and in so far as it had acted on behalf of the direct victim, Mr Câmpeanu – both prior to his death, by launching an appeal for his transfer from the PMH, and immediately afterwards and throughout the next four years, by seeking accountability for his death before the domestic courts – the CLR asserted that it had the right to bring his case before the Court.

The CLR concluded that not acknowledging its standing to act on behalf of Mr Câmpeanu would amount to letting the Government take advantage of his unfortunate circumstances in order to escape the Court's scrutiny, thus blocking access to the Court for the most vulnerable members of society.

(c) Relevant submissions by the third parties

(i) The Council of Europe Commissioner for Human Rights

92. The Council of Europe Commissioner for Human Rights, whose intervention before the Court was limited to the admissibility of the present application, submitted that access to justice for people with disabilities was highly problematic, especially in view of inadequate legal incapacitation procedures and restrictive rules on legal standing. Consequently, the frequent abuses committed against people with disabilities were often not reported to the authorities and were ignored, and an atmosphere of impunity surrounded these violations. In order to prevent and put an end to such abuses, NGOs played an important role, including by facilitating vulnerable people's access to justice. Against that backdrop, allowing NGOs to lodge applications with the Court on behalf of people with disabilities would be fully in line with the principle of effectiveness underlying the Convention, and also with the trends existing at domestic level in many European countries and the case-law of other international courts, such as the Inter-American Court of Human Rights, which granted *locus standi* to NGOs acting on behalf of alleged victims, even when the victims had not

appointed these organisations as their representatives (for instance, in the case of *Yatama v. Nicaragua*, judgment of 23 June 2005).

In the Commissioner's view, a strict approach to *locus standi* requirements concerning people with disabilities (in this case, intellectual) would have the undesired effect of depriving this vulnerable group of any opportunity to seek and obtain redress for breaches of their human rights, thus running counter to the fundamental aims of the Convention.

93. The Commissioner also submitted that in exceptional circumstances, to be defined by the Court, NGOs should be able to lodge applications with the Court on behalf of identified victims who had been directly affected by the alleged violation. Such exceptional circumstances could concern extremely vulnerable victims, for example persons detained in psychiatric and social care institutions, with no family and no alternative means of representation, whose applications, made on their behalf by a person or organisation with which a sufficient connection was established, gave rise to important questions of general interest.

Such an approach would be in line with the European trend towards expanding legal standing and recognising the invaluable contribution made by NGOs in the field of human rights for people with disabilities; at the same time, it would also be in line with the Court's relevant case-law, which had evolved considerably in recent years, not least as a result of the intervention of NGOs.

(ii) The Bulgarian Helsinki Committee

94. The Bulgarian Helsinki Committee contended that, based on its extensive experience as a human rights NGO, institutionalised people with disabilities were devoid of the protection of the criminal law, unless an NGO acted on their behalf using legal remedies in addition to public advocacy, and even in such circumstances, the practical results remained insufficient in that there remained a lack of basic access to the courts for such victims, who at present were often denied justice on procedural grounds. As a result, crime against institutionalised individuals with mental disabilities was shielded from the enforcement of laws designed to ensure its prevention, punishment and redress.

(iii) The Mental Disability Advocacy Center

95. The Mental Disability Advocacy Center submitted that the factual or legal inability of individuals with intellectual disabilities to have access to justice, an issue already examined by the Court in several of its cases (for instance, *Stanev*, cited above), could ultimately lead to impunity for violations of their rights. In situations where vulnerable victims were deprived of their legal capacity and/or detained in State institutions, States could "avoid" any responsibility for protecting their lives by not providing them with any assistance in legal matters, including in relation to the

protection of their human rights. The case-law of the Canadian Supreme Court, the Irish Supreme Court and the High Court of England and Wales granting legal standing to NGOs in situations where no one else was able to bring an issue of public interest before the courts was cited. The above-mentioned courts' decisions on the issue of the *locus standi* of NGOs had mainly been based on an assessment of whether the case concerned a serious matter, whether the claimant had a genuine interest in bringing the case, the claimant's expertise in the area involved in the matter and whether there was any other reasonable and effective means of bringing the issue before the courts.

2. The Court's assessment

(a) The Court's approach in previous cases

(i) Direct victims

96. In order to be able to lodge an application in accordance with Article 34, an individual must be able to show that he or she was "directly affected" by the measure complained of (see *Burden v. the United Kingdom* [GC], no. 13378/05, § 33, ECHR 2008, and *İlhan v. Turkey* [GC], no. 22277/93, § 52, ECHR 2000-VII). This is indispensable for putting the protection mechanism of the Convention into motion, although this criterion is not to be applied in a rigid, mechanical and inflexible way throughout the proceedings (see *Karner*, cited above, § 25, and *Fairfield and Others v. the United Kingdom* (dec.), no. 24790/04, ECHR 2005-VI).

Moreover, in accordance with the Court's practice and with Article 34 of the Convention, applications can only be lodged by, or in the name of, individuals who are alive (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 111, ECHR 2009). Thus, in a number of cases where the direct victim has died prior to the submission of the application, the Court has not accepted that the direct victim, even when represented, had standing as an applicant for the purposes of Article 34 of the Convention (see *Aizpurua Ortiz and Others v. Spain*, no. 42430/05, § 30, 2 February 2010; *Dvořáček and Dvořáčková v. Slovakia*, no. 30754/04, § 41, 28 July 2009; and *Kaya and Polat v. Turkey* (dec.), nos. 2794/05 and 40345/05, 21 October 2008).

(ii) Indirect victims

97. Cases of the above-mentioned type have been distinguished from cases in which an applicant's heirs were permitted to pursue an application which had already been lodged. An authority on this question is *Fairfield and Others* (cited above), where a daughter lodged an application after her father's death, alleging a violation of his rights to freedom of thought,

religion and speech (Articles 9 and 10 of the Convention). While the domestic courts granted Ms Fairfield leave to pursue the appeal after her father's death, the Court did not accept the daughter's victim status and distinguished this case from the situation in *Dalban v. Romania* ([GC], no. 28114/95, ECHR 1999-VI), where the application had been brought by the applicant himself, whose widow had pursued it only after his subsequent death.

In this regard, the Court has differentiated between applications where the direct victim has died after the application was lodged with the Court and those where he or she had already died beforehand.

Where the applicant has died *after* the application was lodged, the Court has accepted that the next-of-kin or heir may in principle pursue the application, provided that he or she has sufficient interest in the case (see, for instance, the widow and children in *Raimondo v. Italy*, 22 February 1994, § 2, Series A no. 281-A, and *Stojkovic v. "the former Yugoslav Republic of Macedonia"*, no. 14818/02, § 25, 8 November 2007; the parents in *X v. France*, no. 18020/91, § 26, 31 March 1992; the nephew and potential heir in *Malhous v. the Czech Republic* (dec.), no. 33071/96, ECHR 2000-XII; or the unmarried or *de facto* partner in *Velikova v. Bulgaria* (dec.), no. 41488/98, 18 May 1999; and contrast the universal legatee not related to the deceased in *Thévenon v. France* (dec.), no. 2476/02, ECHR 200 –III; the niece in *Léger v. France* (striking out) [GC], no. 19324/02, § 50, 30 March 2009; and the daughter of one of the original applicants in a case concerning non-transferable rights under Articles 3 and 8 where no general interest was at stake, *M.P. and Others v. Bulgaria*, no. 22457/08, §§ 96-100, 15 November 2011).

98. However, the situation varies where the direct victim dies *before* the application is lodged with the Court. In such cases the Court has, with reference to an autonomous interpretation of the concept of "victim", been prepared to recognise the standing of a relative either when the complaints raised an issue of general interest pertaining to "respect for human rights" (Article 37 § 1 *in fine* of the Convention) and the applicants as heirs had a legitimate interest in pursuing the application, or on the basis of the direct effect on the applicant's own rights (see *Micallef v. Malta* [GC], no. 17056/06, §§ 44-51, ECHR 2009, and *Marie-Louise Loyen and Bruneel v. France*, no. 55929/00, §§ 21-31, 5 July 2005). The latter cases, it may be noted, were brought before the Court following or in connection with domestic proceedings in which the direct victim himself or herself had participated while alive.

Thus, the Court has recognised the standing of the victim's next-of-kin to submit an application where the victim has died or disappeared in circumstances allegedly engaging the responsibility of the State (see *Çakıcı v. Turkey* [GC], no. 23657/94, § 92, ECHR 1999-IV, and *Bazorkina v. Russia* (dec.), no. 69481/01, 15 September 2005).

99. In *Varnava and Others* (cited above) the applicants lodged the applications both in their own name and on behalf of their disappeared relatives. The Court did not consider it necessary to rule on whether the missing men should or should not be granted the status of applicants since, in any event, the close relatives of the missing men were entitled to raise complaints concerning their disappearance (ibid., § 112). The Court examined the case on the basis that the relatives of the missing persons were the applicants for the purposes of Article 34 of the Convention.

100. In cases where the alleged violation of the Convention was not closely linked to disappearances or deaths giving rise to issues under Article 2, the Court's approach has been more restrictive, as in the case of *Sanles Sanles v. Spain* ((dec.), no. 48335/99, ECHR 2000-XI), which concerned the prohibition of assisted suicide. The Court held that the rights claimed by the applicant under Articles 2, 3, 5, 8, 9 and 14 of the Convention belonged to the category of non-transferable rights, and therefore concluded that the applicant, who was the deceased's sister-in-law and legal heir, could not claim to be the victim of a violation on behalf of her late brother-in-law. The same conclusion has been reached in respect of complaints under Articles 9 and 10 brought by the alleged victim's daughter (see *Fairfield and Others*, cited above).

In other cases concerning complaints under Articles 5, 6 or 8 the Court has granted victim status to close relatives, allowing them to submit an application where they have shown a moral interest in having the late victim exonerated of any finding of guilt (see *Nölkenbockhoff v. Germany*, no. 10300/83, § 33, 25 August 1987, and *Grădinar v. Moldova*, no. 7170/02, §§ 95 and 97-98, 8 April 2008) or in protecting their own reputation and that of their family (see *Brudnicka and Others v. Poland*, no. 54723/00, §§ 27-31, ECHR 2005-II; *Armonienė v. Lithuania*, no. 36919/02, § 29, 25 November 2008; and *Polanco Torres and Movilla Polanco v. Spain*, no. 34147/06, §§ 31-33, 21 September 2010), or where they have shown a material interest on the basis of the direct effect on their pecuniary rights (see *Ressegatti v. Switzerland*, no. 17671/02, §§ 23-25, 13 July 2006; and *Marie-Louise Loyen and Bruneel*, §§ 29-30; *Nölkenbockhoff*, § 33; *Grădinar*, § 97; and *Micallef*, § 48, all cited above). The existence of a general interest which necessitated proceeding with the consideration of the complaints has also been taken into consideration (see *Marie-Louise Loyen and Bruneel*, § 29; *Ressegatti*, § 26; *Micallef*, §§ 46 and 50, all cited above; and *Biç and Others v. Turkey*, no. 55955/00, §§ 22-23, 2 February 2006).

The applicant's participation in the domestic proceedings has been found to be only one of several relevant criteria (see *Nölkenbockhoff*, § 33; *Micallef*, §§ 48-49; *Polanco Torres and Movilla Polanco*, § 31; and *Grădinar*, §§ 98-99, all cited above; and *Kaburov v. Bulgaria* (dec.), no. 9035/06, §§ 52-53, 19 June 2012).

(iii) Potential victims and actio popularis

101. Article 34 of the Convention does not allow complaints *in abstracto* alleging a violation of the Convention. The Convention does not provide for the institution of an *actio popularis* (see *Klass and Others v. Germany*, 6 September 1978, § 33, Series A no. 28; *The Georgian Labour Party v. Georgia* (dec.), no. 9103/04, 22 May 2007; and *Burden*, cited above, § 33), meaning that applicants may not complain against a provision of domestic law, a domestic practice or public acts simply because they appear to contravene the Convention.

In order for applicants to be able to claim to be a victim, they must produce reasonable and convincing evidence of the likelihood that a violation affecting them personally will occur; mere suspicion or conjecture is insufficient in this respect (see *Tauira and 18 Others v. France*, application no. 28204/95, Commission decision of 4 December 1995, Decisions and Reports (DR) 83-B, p. 131, and *Monnat v. Switzerland*, no. 73604/01, §§ 31-32, ECHR 2006-X).

(iv) Representation

102. According to the Court's well-established case-law (see paragraph 96 above), applications can be lodged with it only by living persons or on their behalf.

Where applicants choose to be represented under Rule 36 § 1 of the Rules of Court, rather than lodging the application themselves, Rule 45 § 3 requires them to produce a written authority to act, duly signed. It is essential for representatives to demonstrate that they have received specific and explicit instructions from the alleged victim within the meaning of Article 34 on whose behalf they purport to act before the Court (see *Post v. the Netherlands* (dec.), no. 21727/08, 20 January 2009; as regards the validity of an authority to act, see *Aliev v. Georgia*, no. 522/04, §§ 44-49, 13 January 2009).

103. However, the Convention institutions have held that special considerations may arise in the case of victims of alleged breaches of Articles 2, 3 and 8 at the hands of the national authorities.

Applications lodged by individuals on behalf of the victim(s), even though no valid form of authority was presented, have thus been declared admissible. Particular consideration has been shown with regard to the victims' vulnerability on account of their age, sex or disability, which rendered them unable to lodge a complaint on the matter with the Court, due regard also being paid to the connections between the person lodging the application and the victim (see, *mutatis mutandis*, *İlhan*, cited above, § 55, where the complaints were brought by the applicant on behalf of his brother, who had been ill-treated; *Y.F. v. Turkey*, no. 24209/94, § 29, ECHR 2003–IX , where a husband complained that his wife had been compelled to undergo a gynaecological examination; and *S.P., D.P. and A.T. v. the*

United Kingdom, cited above, where a complaint was brought by a solicitor on behalf of children he had represented in domestic proceedings, in which he had been appointed by the guardian *ad litem*).

By contrast, in *Nencheva and Others* (cited above, § 93) the Court did not accept the victim status of the applicant association acting on behalf of the direct victims, noting that it had not pursued the case before the domestic courts and also that the facts complained of did not have any impact on its activities, since the association was able to continue working in pursuance of its goals. The Court, while recognising the standing of the relatives of some of the victims, nevertheless left open the question of the representation of victims who were unable to act on their own behalf before it, accepting that exceptional circumstances might require exceptional measures.

(b) Whether the CLR had standing in the present case

104. This case concerns a highly vulnerable person with no next-of-kin, Mr Câmpeanu, a young Roma man with severe mental disabilities who was infected with HIV, who spent his entire life in the care of the State authorities and who died in hospital, allegedly as a result of neglect. Following his death, and without having had any significant contact with him while he was alive (see paragraph 23 above) or having received any authority or instructions from him or any other competent person, the applicant association (the CLR) is now seeking to bring before the Court a complaint concerning, amongst other things, the circumstances of his death.

105. In the Court's view the present case does not fall easily into any of the categories covered by the above case-law and thus raises a difficult question of interpretation of the Convention relating to the standing of the CLR. In addressing this question the Court will take into account the fact that the Convention must be interpreted as guaranteeing rights which are practical and effective as opposed to theoretical and illusory (see *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37 and the authorities cited therein). It must also bear in mind that the Court's judgments "serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties" (see *Ireland v. the United Kingdom*, 18 January 1978, § 154, Series A no. 25, and *Konstantin Markin v. Russia* [GC], no. 30078/06, § 89, ECHR 2012). At the same time and, as reflected in the above case-law concerning victim status and the notion of "standing", the Court must ensure that the conditions of admissibility governing access to it are interpreted in a consistent manner.

106. The Court considers it indisputable that Mr Câmpeanu was the *direct victim*, within the meaning of Article 34 of the Convention, of the circumstances which ultimately led to his death and which are at the heart of

the principal grievance brought before the Court in the present case, namely the complaint lodged under Article 2 of the Convention.

107. On the other hand, the Court cannot find sufficiently relevant grounds for regarding the CLR as an indirect victim within the meaning of its case-law. Crucially, the CLR has not demonstrated a sufficiently "close link" with the direct victim; nor has it argued that it has a "personal interest" in pursuing the complaints before the Court, regard being had to the definition of these concepts in the Court's case-law (see paragraphs 97-100 above).

108. While alive, Mr Câmpeanu did not initiate any proceedings before the domestic courts to complain about his medical and legal situation. Although formally he was considered to be a person with full legal capacity, it appears clear that in practice he was treated as a person who did not (see paragraphs 14 and 16 above). In any event, in view of his state of extreme vulnerability, the Court considers that he was not capable of initiating any such proceedings by himself, without proper legal support and advice. He was thus in a wholly different and less favourable position than that dealt with by the Court in previous cases. These concerned persons who had legal capacity, or at least were not prevented from bringing proceedings during their lifetime (see paragraphs 98 and 100 above), and on whose behalf applications were lodged after their death.

109. Following the death of Mr Câmpeanu, the CLR brought various sets of domestic proceedings aimed at elucidating the circumstances leading up to and surrounding his death. Finally, once the investigations had concluded that there had been no criminal wrongdoing in connection with Mr Câmpeanu's death, the CLR lodged the present application with the Court.

110. The Court attaches considerable significance to the fact that neither the CLR's capacity to act for Mr Câmpeanu nor their representations on his behalf before the domestic medical and judicial authorities were questioned or challenged in any way (see paragraphs 23, 27-28, 33, 37-38 and 40-41 above); such initiatives, which would normally be the responsibility of a guardian or representative, were thus taken by the CLR without any objections from the appropriate authorities, who acquiesced in these procedures and dealt with all the applications submitted to them.

111. The Court also notes, as mentioned above, that at the time of his death Mr Câmpeanu had no known next-of-kin, and that when he reached the age of majority no competent person or guardian had been appointed by the State to take care of his interests, whether legal or otherwise, despite the statutory requirement to do so. At domestic level the CLR became involved as a representative only shortly before his death – at a time when he was manifestly incapable of expressing any wishes or views regarding his own needs and interests, let alone on whether to pursue any remedies. Owing to the failure of the authorities to appoint a legal guardian or other

representative, no form of representation was or had been made available for his protection or to make representations on his behalf to the hospital authorities, the national courts and to the Court (see, *mutatis mutandis*, *P., C. and S. v. the United Kingdom* (dec.), no. 56547/00, 11 December 2001, and *B. v. Romania (no. 2)*, cited above, §§ 96-97). It is also significant that the main complaint under the Convention concerns grievances under Article 2 ("Right to life"), which Mr Câmpeanu, although the direct victim, evidently could not pursue by reason of his death.

112. Against the above background, the Court is satisfied that in the exceptional circumstances of this case and bearing in mind the serious nature of the allegations, it should be open to the CLR to act as a representative of Mr Câmpeanu, notwithstanding the fact that it had no power of attorney to act on his behalf and that he died before the application was lodged under the Convention. To find otherwise would amount to preventing such serious allegations of a violation of the Convention from being examined at an international level, with the risk that the respondent State might escape accountability under the Convention as a result of its own failure to appoint a legal representative to act on his behalf as it was required to do under national law (see paragraphs 59 and 60 above; see also, *mutatis mutandis*, *P., C. and S. v. the United Kingdom*, cited above, and *The Argeş College of Legal Advisers v. Romania*, no. 2162/05, § 26, 8 March 2011). Allowing the respondent State to escape accountability in this manner would not be consistent with the general spirit of the Convention, nor with the High Contracting Parties' obligation under Article 34 of the Convention not to hinder in any way the effective exercise of the right to bring an application before the Court.

113. Granting standing to the CLR to act as the representative of Mr Câmpeanu is an approach consonant with that applying to the right to judicial review under Article 5 § 4 of the Convention in the case of "persons of unsound mind" (Article 5 § 1(e)). In this context it may be reiterated that it is essential that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation, failing which he will not have been afforded "the fundamental guarantees of procedure applied in matters of deprivation of liberty" (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 76, Series A no. 12). Mental illness may entail restricting or modifying the manner of exercise of such a right (see *Golder v. the United Kingdom*, 21 February 1975, § 39, Series A no. 18), but it cannot justify impairing the very essence of the right. Indeed, special procedural safeguards may prove called for in order to protect the interests of persons who, on account of their mental disabilities, are not fully capable of acting for themselves (see *Winterwerp v. the Netherlands*, 24 October 1979, § 60, Series A no. 33). A hindrance in fact can contravene the Convention just like a legal impediment (see *Golder*, cited above, § 26).

114. Accordingly, the Court dismisses the Government's objection concerning the lack of *locus standi* of the CLR, in view of the latter's standing as *de facto* representative of Mr Câmpeanu.

The Court further notes that the complaints under this heading are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. *Submissions to the Court*

(a) The CLR

115. The CLR submitted that as a result of their inappropriate decisions concerning Mr Câmpeanu's transfer to institutions lacking the requisite skills and facilities to deal with his condition, followed by inappropriate medical actions or omissions, the authorities had contributed, directly or indirectly, to his untimely death.

The CLR emphasised that although the medical examinations undergone by Mr Câmpeanu during the months prior to his admission to the CMSC and subsequently the PMH had attested to his "generally good state" without any major health problems, his health had deteriorated sharply in the two weeks before his death, at a time when he had been under the authorities' supervision. In accordance with the extensive case-law of the Court under Article 2, as relevant to the present case, the State was required to give an explanation as to the medical care provided and the cause of Mr Câmpeanu's death (the CLR cited, among other authorities, *Kats and Others v. Ukraine*, no. 29971/04, § 104, 18 December 2008; *Dodov v. Bulgaria*, no. 59548/00, § 81, 17 January 2008; *Aleksanyan v. Russia*, no. 46468/06, § 147, 22 December 2008; *Khudobin v. Russia*, no. 59696/00, § 84, ECHR 2006-XII; and *Z.H. v. Hungary*, no. 28973/11, §§ 31-32, 8 November 2012).

This obligation had not been fulfilled by the Government, who on the one hand had failed to submit important medical documents concerning Mr Câmpeanu, and on the other hand had submitted before the Court a duplicate medical record covering the patient's stay at the PMH, in which important information had been altered. While the original medical record – as presented at various stages in the domestic proceedings – had not referred to any ARV medication being provided to Mr Câmpeanu, the new document, written in different handwriting, included references to ARV medication, thus suggesting that such medication had been given to the patient. As the Government had relied on the new document to dispute before the Court the CLR's submissions concerning the lack of ARV treatment (see paragraph 122 below), the CLR submitted that the document

had in all likelihood been produced after the event, to support the Government's arguments before the Court.

116. The CLR further submitted that several documents produced in the case, especially in connection with the CPT's on-site visits, proved that the authorities had definitely been aware of the substandard living conditions and provision of care and treatment at the PMH, both prior to 2004 and even around the relevant time (see paragraphs 47, 74 and 78 above).

117. The failure to provide adequate care and treatment to Mr Câmpeanu was highlighted by the very poorly kept medical records and the improperly recorded successive transfers of the patient between different hospital units. Such omissions were significant, since it was obvious that the patient's state of health had deteriorated during the relevant period and thus emergency treatment had been required. Also, as mentioned above, while the patient's ARV medication had been discontinued during his short stay at the CMSC, it was very plausible that during his stay at the PMH Mr Câmpeanu had not received any ARV medication either. At the same time, although a series of medical tests had been required, they had never been carried out. The official investigation had failed to elucidate such crucial aspects of the case, notwithstanding that there might have been more plausible explanations for the patient's alleged psychotic behaviour, such as septicaemia or his enforced segregation in a separate room.

In view of the above, the CLR submitted that the substantive obligations under Article 2 had clearly not been fulfilled by the respondent State.

118. The CLR further maintained that the living conditions at the PMH and the patient's placement in a segregated room amounted to a separate violation of Article 3.

Solid evidence in the file, including documents issued by Romanian authorities, such as the Government, the prosecutor's office attached to the High Court, the National Forensic Institute or the staff of the PMH itself, highlighted the substandard conditions at the PMH at the relevant time, especially concerning the lack of food, lack of heating and presence of infectious diseases.

It was undisputed that Mr Câmpeanu had been placed alone in a separate room; the CLR monitors had noted at the time of their visit to the PMH that the patient was not dressed properly, the room was cold and the staff refused to provide him with any support in meeting his basic personal needs. Whilst the Government alleged that this measure had been taken without any intention to discriminate against the patient, they had failed to provide any valid justification for it. The assertion that the room in question was the only space available was contradicted by numerous reports showing that the hospital had not been operating at full capacity at the time.

119. The CLR contended that the official investigation conducted in the case had not complied with the requirements of the Convention, for the following reasons: its scope was too narrow, focusing only on two doctors,

one from the CMSC and the other from the PMH, while ignoring other staff or other agencies involved; only the immediate cause of death and the period immediately before it had been analysed; and the authorities had failed to collect essential evidence in good time and to elucidate disputed facts, including the cause of death in the case. The failure to carry out an autopsy immediately after the patient's death and failures in the provision of medical care were shortcomings underlined in the first-instance court's decision, which had, however, been overturned by the appellate court.

The CLR submitted in conclusion that the investigation had fallen short of the requirements set out in Articles 2 and 3 of the Convention in that it had failed to establish the facts, identify the cause of death and punish the perpetrators.

120. The CLR argued that in the case of people with disabilities who were confined in State institutions, Article 13 required States to take positive steps to ensure that these people had access to justice, including by creating an independent monitoring mechanism able to receive complaints on such matters, investigate abuse, impose sanctions or refer the case to the appropriate authority.

121. It submitted that in several previous cases against Romania, the Court had found a violation on account of the lack of adequate remedies concerning people with disabilities complaining under Articles 3 or 5 of the Convention (it cited *Filip v. Romania*, no. 41124/02, § 49, 14 December 2006; *C.B. v. Romania*, cited above, §§ 65-67; *Parascineti v. Romania*, no. 32060/05, §§ 34-38, 13 March 2012; and *B. v. Romania (no. 2)*, cited above, § 97).

The same conclusions emerged from the consistent documentation issued by international NGOs such as Human Rights Watch or Mental Disability Rights International, and the CLR itself had also reported on the lack of safeguards against ill-treatment and the fact that residents of psychiatric institutions were largely unaware of their rights, while staff were not trained in handling allegations of abuse.

The CLR further contended that to its knowledge, despite highly credible allegations concerning suspicious deaths in psychiatric institutions, there had never been any final decision declaring a staff member criminally or civilly liable for misconduct in relation to such deaths. In the case of the 129 deaths reported at the PMH during the period from 2002 to 2004, criminal investigations had not resulted in any finding of wrongdoing, the decisions not to bring charges having been subsequently upheld by the courts.

In conclusion, the Romanian legal system lacked effective remedies within the meaning of Article 13 in relation to people with mental disabilities in general, but more particularly in relation to Mr Câmpeanu's rights as protected by Articles 2 and 3.

(b) The Government

122. The Government contended that since HIV was a very serious progressive disease, the fact that Mr Câmpeanu had died from it was not in itself proof that his death had been caused by shortcomings in the medical system.

Furthermore, no evidence had been adduced to show that the authorities had failed to provide Mr Câmpeanu with ARV treatment; on the contrary, the Government submitted a copy of the patient's medical records at the PMH, confirming that he had received the required ARV treatment while at the hospital.

The conclusion of the Disciplinary Board of the Medical Association also confirmed the adequacy of the treatment given to Mr Câmpeanu (see paragraph 35 above). Article 2 under its substantive head was therefore not applicable to the case.

123. Under Article 3, the Government submitted that both at the CMSC and at the PMH, the general conditions (hygiene, nutrition, heating and also human resources) had been adequate and in accordance with the standards existing at the material time.

The medical care received by Mr Câmpeanu had been appropriate to his state of health; he had been admitted to the CMSC while in a "generally good state" and transferred to the PMH once the "violent outbursts" had begun. The patient had been placed alone in a room at the PMH, not with the intention of isolating him, but because that had been the only spare room. In spite of his treatment through intravenous feeding, the patient had died on 20 February 2004 of cardiorespiratory insufficiency.

In this context, the Government argued that given the short period of time which Mr Câmpeanu had spent at the PMH, Article 3 was not applicable in relation to the material conditions at the hospital.

124. The Government contended that the criminal complaints lodged by the CLR in connection with the circumstances of Mr Câmpeanu's death had been thoroughly considered by the domestic authorities – courts, commissions or investigative bodies – which had all given detailed and compelling reasons for their rulings. Therefore, the State's liability under Articles 2 or 3 could not be engaged.

125. Concerning Article 13, the Government submitted that as this complaint related to the other complaints brought by the CLR, no separate examination was necessary; in any event, the complaints under this Article were ill-founded.

In the alternative, the Government maintained that the domestic legislation provided effective remedies within the meaning of Article 13 for the complaints raised in the application.

The Government indicated the Romanian Ombudsman as one of the available remedies. According to the statistical information available on the

Ombudsman's website, the Ombudsman had been involved in several cases concerning alleged human rights infringements between 2003 and 2011.

Referring to two domestic judgments provided as evidence at the Court's request, the Government asserted that when dealing with cases involving people with mental disabilities, the Romanian courts acted very seriously and regularly gave judgments on the merits.

126. On a more specific level, in relation to Article 2, the Government submitted that the situation at the PMH had significantly improved, following complaints relating to the living and medical conditions at the hospital. In that respect a complaint appeared to constitute an effective remedy, in terms of the Convention standards.

Referring to Article 3, the Government argued that the CLR could also have brought an action seeking compensation for medical malpractice.

For the above-mentioned reasons, the Government submitted that Mr Câmpeanu had, either in person or through representation, had various effective remedies for each of the complaints raised in the application; the complaint under Article 13 was therefore inadmissible.

(c) Third-party interveners

(i) The Mental Disability Advocacy Center

127. The Mental Disability Advocacy Center (MDAC) argued that cases of life-threatening conditions in institutions housing children with mental disabilities or HIV had been documented throughout Europe, with reports suggesting that sick children tended not to be admitted to hospital, regardless of the seriousness of their condition, and that they were left to die in those institutions. In its 2009 Human Rights Report on Romania, the US Department of State had drawn attention to the continuing poor conditions at the PMH, referring to overcrowding, shortage of staff and medication, poor hygiene, and widespread use of sedation and restraint.

Referring to international case-law on the right to life (for example, the judgments of the Inter-American Court of Human Rights in *Villagrán Morales et al. v. Guatemala*, 19 November 1999, concerning five children who lived in the streets, and *Velásquez Rodríguez v. Honduras*, 29 July 1988), the MDAC submitted that the State's obligation to protect life included providing necessary medical treatment, taking any necessary preventive measures and implementing mechanisms capable of monitoring, investigating and prosecuting those responsible; at the same time, victims should be afforded an effective or practical opportunity to seek protection of their right to life. Failure of the State to provide extremely vulnerable persons with such an opportunity while alive should not ultimately lead to the State's impunity after their death.

(ii) The Euroregional Center for Public Initiatives

128. The Euroregional Center for Public Initiatives (ECPI) submitted that Romania had one of the largest groups of people living with HIV (PLHIV) in central and eastern Europe, mainly because between 1986 and 1991 some 10,000 children institutionalised in public hospitals and orphanages had been exposed to the risks of HIV transmission through multiple use of needles and microtransfusions with unscreened blood. In December 2004 there had been 7,088 cases of AIDS and 4,462 cases of HIV infections registered among children. Out of these, 3,482 children had died of AIDS by the end of 2004.

The ECPI alleged that the high incidence of HIV infection among children was due to the treatment to which they had been subjected in orphanages and hospitals, in view of the fact that children with disabilities were considered "beyond recovery" and "unproductive" and because the personnel lacked the qualifications and interest to provide them with appropriate medical care.

The ECPI referred to the fact that in 2003 the UN Committee on the Rights of the Child had expressed its concern that ARV treatment was accessible to only a limited number of people in Romania and its continuous provision was usually interrupted owing to lack of funds. Moreover, even at the end of 2009, stocks of ARV medication had been scarce because of a lack of financial resources from the National Health Insurance Fund and the mismanagement of the national HIV programme.

The ECPI further submitted that when PLHIV lived in closed institutions or hospitals for an extended period, their access to ARV was heavily reliant on the steps taken by the institution to obtain supplies from the infectious-diseases doctor with whom the patient was registered. Commonly, HIV-infected patients usually lacked the information they needed in order to assert their lawful rights in accessing medical services.

In 2009 the UN Committee on the Rights of the Child had expressed concern that children affected by HIV often experienced barriers in accessing health services.

Concerning the particular case of PLHIV who also suffered from mental health problems, the ECPI alleged that psychiatric hospitals sometimes refused to treat HIV-positive children and young people for fear of infection. Reference was made to a Human Rights Watch document of 2007 reporting on such situations (*Life Doesn't Wait. Romania's Failure to Protect and Support Children and Youth Living with HIV*).

(iii) Human Rights Watch

129. Human Rights Watch made reference in its written submissions to the conclusions of the UN Committee on Economic, Social and Cultural Rights, to the effect that health facilities and services must be accessible to all, especially the most vulnerable population, and that failure by

governments to provide such services included the lack of a national health policy designed to ensure the right to health for everyone, bad management in the allocation of available public resources, and failure to reduce infant and maternal mortality rates.

2. The Court's assessment

(a) Article 2 of the Convention

(i) General principles

130. The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III).

The positive obligations under Article 2 must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake. This is the case, for example, in the health-care sector as regards the acts or omissions of health professionals (see *Dodov*, cited above, §§ 70, 79-83 and 87, and *Vo v. France* [GC], no. 53924/00, §§ 89-90, ECHR 2004-VIII, with further references), States being required to make regulations compelling hospitals, whether public or private, to adopt appropriate measures for the protection of their patients' lives (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 49, ECHR 2002-I). This applies especially where patients' capacity to look after themselves is limited (see *Dodov*, cited above, § 81); in respect of the management of dangerous activities (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 71, ECHR 2004-XII); in connection with school authorities, which have an obligation to protect the health and well-being of pupils, in particular young children who are especially vulnerable and are under their exclusive control (see *Ilbeyi Kemaloğlu and Meriye Kemaloğlu v. Turkey*, no. 19986/06, § 35, 10 April 2012); or, similarly, regarding the medical care and assistance given to young children institutionalised in State facilities (see *Nencheva and Others*, cited above, §§ 105-116).

Such positive obligations arise where it is known, or ought to have been known to the authorities in view of the circumstances, that the victim was at real and immediate risk from the criminal acts of a third party (see *Nencheva and Others*, cited above, § 108) and, if so, that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *A. and Others v. Turkey*, no. 30015/96, §§ 44-45, 27 July 2004).

131. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but

also all the surrounding circumstances. Persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Where the authorities decide to place and maintain in detention a person with disabilities, they should demonstrate special care in guaranteeing such conditions as correspond to his special needs resulting from his disability (see *Jasinskis v. Latvia*, no. 45744/08, §59, 21 December 2010, with further references). More broadly, the Court has held that States have an obligation to take particular measures to provide effective protection of vulnerable persons from ill-treatment of which the authorities had or ought to have had knowledge (*Z and Others v. the United Kingdom* [GC], no. 29392/95, § 73, ECHR 2001-V). Consequently, where an individual is taken into custody in good health but later dies, it is incumbent on the State to provide a satisfactory and convincing explanation of the events leading to his death (see *Carabulea v. Romania*, no. 45661/99, § 108, 13 July 2010) and to produce evidence casting doubt on the veracity of the victim's allegations, particularly if those allegations are backed up by medical reports (see *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V, and *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 43, 2 November 2004).

In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Orhan v. Turkey*, no. 25656/94, § 264, 18 June 2002, § 264, and *Ireland v. the United Kingdom*, cited above, § 161).

132. The State's duty to safeguard the right to life must be considered to involve not only the taking of reasonable measures to ensure the safety of individuals in public places but also, in the event of serious injury or death, having in place an effective independent judicial system securing the availability of legal means capable of promptly establishing the facts, holding accountable those at fault and providing appropriate redress to the victim (see *Dodov*, cited above, § 83).

This obligation does not necessarily require the provision of a criminal-law remedy in every case. Where negligence has been shown, for example, the obligation may for instance also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts. However, Article 2 of the Convention will not be satisfied if the protection afforded by domestic law exists only in theory: above all, it must also operate effectively in practice (see *Calvelli and Ciglio*, cited above, § 53).

133. On the other hand, the national courts should not permit life-endangering offences to go unpunished. This is essential for maintaining public confidence and ensuring adherence to the rule of law and for preventing any appearance of tolerance of or collusion in unlawful acts (see, *mutatis mutandis*, *Nikolova and Velichkova v. Bulgaria*, no. 7888/03,

§ 57, 20 December 2007). The Court's task therefore consists in reviewing whether and to what extent the courts, in reaching their conclusion, have carried out the careful scrutiny required by Article 2 of the Convention, so as to maintain the deterrent effect of the judicial system in place and ensure that violations of the right to life are examined and redressed (see *Öneryıldız*, cited above, § 96).

(ii) Application of these principles in the present case

(α) Substantive head

134. Referring to the background to the case, the Court notes at the outset that Mr Câmpeanu lived his whole life in the hands of the domestic authorities: he grew up in an orphanage after having been abandoned at birth, and he was later transferred to the Placement Centre, subsequently to the CMSC and finally to the PMH, where on 20 February 2004 he met his untimely death.

135. Throughout these stages no guardian, whether permanent or temporary, was appointed after Mr Câmpeanu turned eighteen; the presumption was therefore that he had full legal capacity, in spite of his severe mental disability.

If that was indeed so, the Court notes that the manner in which the medical authorities handled Mr Câmpeanu's case ran counter to the requirements of the Mental Health Act in the case of patients with full legal capacity: no consent was obtained for the patient's successive transfers from one medical unit to another, after he had turned eighteen; no consent was given for his admission to the PMH, a psychiatric institution; the patient was neither informed nor consulted regarding the medical care that was given to him, nor was he informed of the possibility for him to challenge any of the above-mentioned measures. The authorities' justification was that the patient "would not cooperate", or that "it was not possible to communicate with him" (see paragraphs 14 and 16 above).

In this context, the Court reiterates that in the case of *B. v. Romania (no. 2)* (cited above, §§ 93-98) it highlighted serious shortcomings in the manner in which the provisions of the Mental Health Act were implemented by the authorities with respect to vulnerable patients who were left without any legal assistance or protection when admitted to psychiatric institutions in Romania.

136. Moreover, the Court observes that the decisions of the domestic authorities to transfer Mr Câmpeanu and to place him firstly in the CMSC and later in the PMH were mainly based on what establishment would be willing to accommodate the patient, rather than on where he would be able to receive appropriate medical care and support (see paragraphs 12-13 above). In this connection, the Court cannot ignore the fact that Mr Câmpeanu was first placed in the CMSC, a unit not equipped to handle

patients with mental health problems, and was ultimately admitted to the PMH, despite the fact that that hospital had previously refused to admit him on the grounds that it lacked the necessary facilities to treat HIV (see paragraph 11 above).

137. The Court therefore considers that Mr Câmpeanu's transfers from one unit to another took place without any proper diagnosis and aftercare and in complete disregard of his actual state of health and his most basic medical needs. Of particular note is the authorities' negligence in omitting to ensure the appropriate implementation of the patient's course of ARV treatment, firstly by not providing him with the medication during his first few days in the CMSC, and subsequently, by failing altogether to provide him with the medication while in the PMH (see paragraphs 14 and 115 above).

In reaching these conclusions, the Court relies on the CLR's submissions, supported by the medical documents produced before the domestic courts and the conclusions of the expert called to give an opinion on the therapeutic approach applied in Mr Câmpeanu's case (see paragraphs 33, 38 and 45 above), as well as on the information provided by the ECPI concerning the general conditions in which ARV treatment was provided to HIV-infected children (see paragraph 128 above), making the CLR's assertions plausible. In view of these elements, the Court considers that the Government's allegations to the contrary are unconvincing in so far as they are not corroborated by any other evidence proving them beyond reasonable doubt.

138. Furthermore, the facts of the case indicate that, faced with a sudden change in the behaviour of the patient, who became hyper-aggressive and agitated, the medical authorities decided to transfer him to a psychiatric institution, namely the PMH, where he was placed in a department that had no psychiatrists on its staff (see paragraph 21 above). As mentioned above, the PMH lacked the appropriate facilities to treat HIV-infected patients at the time; moreover, while at the PMH, the patient was never consulted by an infectious-diseases specialist.

The only treatment provided to Mr Câmpeanu included sedatives and vitamins, and no meaningful medical investigation was conducted to establish the causes of the patient's mental state (see paragraphs 16 and 22 above). In fact, no relevant medical documents recording Mr Câmpeanu's clinical condition while at the CMSC and the PMH were produced by the authorities. The information concerning the possible causes of Mr Câmpeanu's death was likewise lacking in detail: the death certificate mentioned HIV and intellectual disability as important factors leading to his death which allegedly justified the authorities' decision not to carry out the compulsory autopsy on the body (see paragraphs 24 and 25 above).

139. The Court refers to the conclusions of the medical report issued by the expert instructed by the CLR, describing the "very poor and

substandard" medical records relating to Mr Câmpeanu's state of health (see paragraph 45 above). According to this report, the medical supervision in both establishments was "scant", while the medical authorities, confronted with the patient's deteriorating state of health, had taken measures that could at best be described as palliative. The expert further mentioned that several potential causes of death, including pneumocystis pneumonia (which was also mentioned in the autopsy report), had never been investigated or diagnosed, let alone treated, either at the CMSC or at the PMH (ibid.). The report concluded that Mr Câmpeanu's death at the PMH had been caused by "gross medical negligence" (see paragraph 46 above).

140. The Court reiterates in this context that in assessing the evidence adduced before it, particular attention should be paid to Mr Câmpeanu's vulnerable state (see paragraph 7 above) and the fact that for the duration of his whole life he was in the hands of the authorities, which are therefore under an obligation to account for his treatment and to give plausible explanations concerning such treatment (see paragraph 131 above).

The Court notes, firstly, that the CLR's submissions describing the events leading to Mr Câmpeanu's death are strongly supported by the existence of serious shortcomings in the medical authorities' decisions. Such shortcomings were described in the reasoning of the Chief Prosecutor in the decision of 23 August 2005 (see paragraph 33 above); in the first-instance court's decision of 3 October 2007, in which it decided to send the case back for further investigation (see paragraph 38 above); and in the conclusions of the medical report submitted by the CLR in the case.

Secondly, the Government have failed to produce sufficient evidence casting doubt on the veracity of the allegations made on behalf of the victim. While acknowledging that HIV may be a very serious progressive disease, the Court cannot ignore the clear and concordant inferences indicating serious flaws in the decision-making process concerning the provision of appropriate medication and care to Mr Câmpeanu (see paragraphs 137-138 above). The Government have also failed to fill in the gaps relating to the lack of relevant medical documents describing Mr Câmpeanu's situation prior to his death, and the lack of pertinent explanations as to the real cause of his death.

141. Moreover, placing Mr Câmpeanu's individual situation in the general context, the Court notes that at the relevant time, several dozen deaths (eighty-one in 2003 and twenty-eight at the beginning of 2004) had already been reported at the PMH; as mentioned in the CPT report of 2004, serious deficiencies were found at the relevant time in respect of the food given to the patients, and in respect of the insufficient heating and generally difficult living conditions, which had led to a gradual deterioration in the health of patients, especially those who were the most vulnerable (see paragraph 77 above). The appalling conditions at the PMH had been reported by several other international bodies, as described above (see

paragraph 78); the domestic authorities were therefore fully aware of the very difficult situation in the hospital.

Despite the Government's assertions that the living conditions at the PMH were adequate (see paragraph 123 above), the Court notes that at the relevant time, the domestic authorities had acknowledged before the various international bodies the deficiencies at the PMH regarding the heating and water systems, the living and sanitary conditions and the medical assistance provided (see paragraph 78 above).

142. The Court observes that in the case of *Nencheva and Others* (cited above) the Bulgarian State was found to be in breach of its obligations under Article 2 for not having taken sufficiently prompt action to ensure effective and sufficient protection of the lives of young people in a social care home. The Court took into consideration the fact that the children's death was not a sudden event, in so far as the authorities had already been aware of the appalling living conditions in the social care home and of the increase in the mortality rate in the months prior to the relevant time (ibid., §§ 121-123).

143. The Court finds that, similarly, in the present case the domestic authorities' response to the generally difficult situation at the PMH at the relevant time was inadequate, seeing that the authorities were fully aware of the fact that the lack of heating and appropriate food, and the shortage of medical staff and medical resources, including medication, had led to an increase in the number of deaths during the winter of 2003.

The Court considers that in these circumstances, it is all the more evident that by deciding to place Mr Câmpeanu in the PMH, notwithstanding his already heightened state of vulnerability, the domestic authorities unreasonably put his life in danger. The continuous failure of the medical staff to provide Mr Câmpeanu with appropriate care and treatment was yet another decisive factor leading to his untimely death.

144. The foregoing considerations are sufficient to enable the Court to conclude that the domestic authorities have failed to comply with the substantive requirements of Article 2 of the Convention, by not providing the requisite standard of protection for Mr Câmpeanu's life.

(β) Procedural head

145. The Court further considers that the authorities failed not only to meet Mr Câmpeanu's most basic medical needs while he was alive, but also to elucidate the circumstances surrounding his death, including the identification of those responsible.

146. The Court notes that several procedural irregularities were singled out in various reports by the domestic authorities at the time, among them the failure to carry out an autopsy immediately after Mr Câmpeanu's death, in breach of the domestic legal provisions, and the lack of an effective

investigation concerning the therapeutic approach applied in his case (see paragraphs 33, 38 and 40 above).

Moreover, serious procedural shortcomings were highlighted in the Calafat District Court's judgment, including the failure to collect essential medical evidence and to provide an explanation for the contradictory statements by the medical staff (see paragraph 38 above). However, as that judgment was not upheld by the County Court, the shortcomings noted have never been addressed, let alone remedied. In its brief reasoning, the County Court relied mainly on the decision of the Medical Association and the forensic report, which ruled out any medical negligence in the case while concluding that the patient had been provided with appropriate medical treatment.

The Court finds these conclusions to be strikingly terse, in view of the acknowledged scarcity of medical information documenting the treatment provided to Mr Câmpeanu (see paragraph 45 above) and in view of the objective situation of the PMH as regards the human and medical resources available to it (see paragraphs 77-78 above).

The Court further takes note of the CLR's assertion that in the case of the 129 deaths at the PMH reported between 2002 and 2004 the criminal investigations were all terminated without anyone being identified or held civilly or criminally liable for misconduct.

147. Having regard to all these elements, the Court concludes that the authorities have failed to subject Mr Câmpeanu's case to the careful scrutiny required by Article 2 of the Convention and thus to carry out an effective investigation into the circumstances surrounding his death.

There has accordingly also been a violation of Article 2 of the Convention under its procedural limb.

(b) Article 13 in conjunction with Article 2

(i) General principles

148. Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order.

The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision.

The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless the remedy required by Article 13 must be "effective" in practice as well as in law. In particular, its exercise must not be unjustifiably hindered by the acts

or omissions of the authorities of the respondent State (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, §§ 96-97, ECHR 2002-II).

149. Where a right of such fundamental importance as the right to life or the prohibition against torture, inhuman and degrading treatment is at stake, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible, including effective access for the complainant to the investigation procedure. Where alleged failure by the authorities to protect persons from the acts of others is concerned, Article 13 may not always require the authorities to assume responsibility for investigating the allegations. There should, however, be available to the victim or the victim's family a mechanism for establishing any liability of State officials or bodies for acts or omissions involving the breach of their rights under the Convention (see *Z and Others v. the United Kingdom* [GC], cited above, § 109).

In the Court's opinion, the authority referred to in Article 13 may not necessarily in all instances be a judicial authority in the strict sense. Nevertheless, the powers and procedural guarantees an authority possesses are relevant in determining whether the remedy before it is effective (see *Klass and Others*, cited above, § 67). The Court has held that judicial remedies furnish strong guarantees of independence, access for the victim and family, and enforceability of awards in compliance with the requirements of Article 13 (see *Z and Others v. the United Kingdom*, cited above, § 110).

(ii) Application of these principles in the present case

150. As mentioned above, Article 13 must be interpreted as guaranteeing an "effective remedy before a national authority" to everyone who claims that his or her rights and freedoms under the Convention have been violated. The fundamental requirement of such a remedy is that the victim has effective access to it.

151. In the present case, the Court has already established that Mr Câmpeanu's vulnerability, coupled with the authorities' failure to implement the existing legislation and to provide him with appropriate legal support, were factors that supported the legal basis for its exceptional recognition of the *locus standi* of the CLR (see paragraph 112 above). Had it not been for the CLR, the case of Mr Câmpeanu would never have been brought to the attention of the authorities, whether national or international.

However, the Court notes that the CLR's initiatives on behalf of Mr Câmpeanu were more of a *sui generis* nature, rather than falling within the existing legal framework relating to the rights of mentally disabled individuals, in view of the fact that this framework was ill-suited to address the specific needs of such individuals, notably regarding the practical possibility for them to have access to any available remedy. Indeed, the

Court has previously found the respondent State to be in breach of Articles 3 or 5 of the Convention on account of the lack of adequate remedies concerning people with disabilities, including their limited access to any such potential remedies (see *C.B. v. Romania*, §§ 65-67; *Parascineti*, §§ 34-38; and *B. v. Romania (no. 2)*, § 97, all cited above).

152. On the basis of the evidence adduced in the present case, the Court has already found that the respondent State was responsible under Article 2 for failing to protect Mr Câmpeanu's life while he was in the care of the domestic medical authorities and for failing to conduct an effective investigation into the circumstances leading to his death. The Government have not referred to any other procedure whereby the liability of the authorities could be established in an independent, public and effective manner.

The Court further considers that the examples mentioned by the Government as indicative of the existence of appropriate remedies under Article 13 (see paragraph 125 above) are either insufficient or lacking in effectiveness, in view of their limited impact and the lack of procedural safeguards they afford.

153. In view of the aforementioned considerations, the Court considers that the respondent State has failed to provide an appropriate mechanism able to afford redress to people with mental disabilities claiming to be victims under Article 2 of the Convention.

More particularly, the Court finds a violation of Article 13 in conjunction with Article 2 of the Convention, on account of the State's failure to secure and implement an appropriate legal framework that would have enabled Mr Câmpeanu's allegations relating to breaches of his right to life to have been examined by an independent authority.

(c) Article 3, taken alone and in conjunction with Article 13 of the Convention

154. Having regard to its findings in paragraphs 140 to 147 above and its conclusion in paragraph 153 above, the Court considers that no separate issue arises concerning the alleged breaches of Article 3, taken alone and in conjunction with Article 13 (see, *mutatis mutandis*, *Nikolova and Velichkova v. Bulgaria*, cited above, § 78, and *Timus and Tarus v. the Republic of Moldova*, no. 70077/11, § 58, 15 October 2013).

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

155. The CLR further submitted that Mr Câmpeanu had suffered a breach of his rights protected by Articles 5, 8 and 14 of the Convention.

156. However, having regard to the facts of the case, the submissions of the parties and its findings under Articles 2 and 13 of the Convention, the Court considers that it has examined the main legal questions raised in the present application and that there is no need to give a separate ruling on the

remaining complaints (see, among other authorities, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007; *The Argeş College of Legal Advisers*, cited above, § 47; *Women On Waves and Others v. Portugal*, no. 31276/05, § 47, 3 February 2009; *Velcea and Mazăre v. Romania*, no. 64301/01, § 138, 1 December 2009; *Villa v. Italy*, no. 19675/06, § 55, 20 April 2010; *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 72, ECHR 2012; and *Mehmet Hatip Dicle v. Turkey*, no. 9858/04, § 41, 15 October 2013; see also *Varnava and Others*, cited above, §§ 210-211).

IV. ARTICLES 46 AND 41 OF THE CONVENTION

A. Article 46 of the Convention

157. The relevant parts of Article 46 read as follows:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution. ..."

158. The Court reiterates that by Article 46 of the Convention the Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach of the Convention or the Protocols thereto imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress as far as possible the effects (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII, and *Stanev*, cited above, § 254). The Court further notes that it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order to discharge its obligation under Article 46 of the Convention (see *Scozzari and Giunta*, cited above, and *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I).

159. However, with a view to assisting the respondent State to fulfil its obligations under Article 46, the Court may seek to indicate the type of individual and/or general measures that might be taken in order to put an end to the situation it has found to exist (see, among many other authorities, *Vlad and Others v. Romania*, nos. 40756/06, 41508/07 and 50806/07, § 162, 26 November 2013).

160. In the present case the Court recalls that owing to the failure of the authorities to appoint a legal guardian or other representative, no form of

representation was or had been made available for Mr Câmpeanu's protection or to make representations on his behalf to the hospital authorities, the national courts and to the Court (see paragraph 111 above). In the exceptional circumstances that prompted it to allow the CLR to act on behalf of Mr Câmpeanu (see conclusion in paragraph 112 above) the Court has also found a violation of Article 13 in conjunction with Article 2 of the Convention on account of the State's failure to secure and implement an appropriate legal framework that would have enabled complaints concerning Mr Câmpeanu's allegations to have been examined by an independent authority (see paragraphs 150 to 153 above; see also paragraph 154 regarding the complaints under Article 3 taken alone and in conjunction with Article 13). Thus, the facts and circumstances in respect of which the Court found a violation of Articles 2 and 13 reveal the existence of a wider problem calling for it to indicate general measures for the execution of its judgment.

161. Against this background, the Court recommends that the respondent State envisage the necessary general measures to ensure that mentally disabled persons in a situation comparable to that of Mr Câmpeanu, are afforded independent representation, enabling them to have Convention complaints relating to their health and treatment examined before a court or other independent body (see, *mutatis mutandis*, paragraph 113 above and *Stanev*, cited above, § 258).

B. Article 41 of the Convention

162. 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."

1. Damage

163. The CLR did not submit any claims in respect of pecuniary or non-pecuniary damage.

2. Costs and expenses

164. The CLR claimed EUR 11,455.25 for the costs and expenses incurred before the domestic courts in relation to the investigations into the PMH and before this Court; Interights, acting as adviser to counsel for the CLR, claimed EUR 25,800 for the costs and expenses incurred before the Chamber, corresponding to 215 hours' work, and an additional EUR 14,564 for the proceedings before the Grand Chamber, corresponding to 111 hours' work. An itemised schedule of these costs was submitted.

165. The Government contended that not all the costs and expenses were documented and detailed appropriately and that in any event they were excessive.

166. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court is satisfied that the CLR's recourse to Interights' participation in the proceedings as described above was justified (see, for example, *Yaşa v. Turkey*, 2 September 1998, § 127, *Reports* 1998-VI; and *Menteş and Others v. Turkey*, 28 November 1997, § 107, *Reports* 1997-VIII). Regard being had to the documents in its possession, to the number and complexity of issues of fact and law dealt with and the above criteria, the Court considers it reasonable to award EUR 10,000 to the CLR and EUR 25,000 to Interights.

3. Default interest

167. 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

1. *Declares*, unanimously, the complaints under Article 2, 3 and 13 of the Convention admissible;

2. *Holds*, unanimously, that there has been a violation of Article 2 of the Convention, in both its substantive and procedural aspects;

3. *Holds*, unanimously, that there has been a violation of Article 13 in conjunction with Article 2 of the Convention;

4. *Holds*, by fourteen votes to three, that it is not necessary to examine the complaint under Article 3, taken alone or in conjunction with Article 13 of the Convention;

5. *Holds*, unanimously, that it is not necessary to examine the admissibility and merits of the complaints under Article 5 and 8 of the Convention;

6. *Holds*, by fifteen votes to two, that it is not necessary to examine the admissibility and merits of the complaints under Article 14 of the Convention;

7. *Holds*, unanimously,

(a) that the respondent State is to pay, within three months, the following amounts in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable:

(i) EUR 10,000 (ten thousand euros) to the CLR; and

(ii) EUR 25,000 (twenty-five thousand euros) to Interights;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses*, unanimously, the remainder of the just satisfaction claims.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 17 July 2014.

Michael O'Boyle
Deputy Registrar

Dean Spielmann
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) concurring opinion of Judge Pinto de Albuquerque;

(b) partly dissenting opinion of Judges Spielmann, Bianku and Nußberger;

(c) partly dissenting opinion of Judges Ziemele and Bianku.

D.S.
M.O.B.

CONCURRING OPINION OF JUDGE PINTO DE ALBUQUERQUE

1. *Valentin Câmpeanu* is a notorious case of judge-made law. In addition to the fundamental question of the legitimacy of this mode of exercising judicial power, the majority's judgment also raises the crucial question of the method of reasoning used to establish the findings of the case and the scope of those findings. Ultimately, the European Court of Human Rights ("the Court") is faced with these questions: Can judges create law? And if they can, how should they proceed, and within what limits? Without expecting to solve problems of this magnitude in the limited confines of a separate opinion, I felt that, nevertheless, I had an obligation to explain my vote for the majority position with a concurring opinion, in which these problems could at least be approached. What apparently seemed a case involving a simple procedural problem of legal representation could have become a ground-breaking case in which the Court addressed, in novel and solid terms, the interplay between legal principles and rules in the task of human rights treaty interpretation, and the limits of the Court's own legal creativity. None of this happened, unfortunately.

2. Mr Câmpeanu died at the age of 18 in the Poiana Mare Neuropsychiatric Hospital. He was a severely mentally disabled, HIV-positive Roma teenager, who at a certain point in time suffered from pulmonary tuberculosis, pneumonia and chronic hepatitis. He had no relatives, legal guardians or representatives, was abandoned at birth and lived in various public orphanages, centres for disabled children and medical facilities, where he allegedly did not receive proper health and educational treatment. Since these facts were abundantly proven and revealed *ad nauseam* a flagrant violation of the deceased teenager's human rights, the only apparent question to be determined in this case was the right of the Centre for Legal Resources (CLR) to act on his behalf before the Court. As the Commissioner for Human Rights stressed, an intolerable legal gap in the protection of human rights emerged in this situation in view of Mr Câmpeanu's lifelong state of extreme vulnerability, the absence of any relatives, legal guardians or representatives and the unwillingness of the respondent State to investigate his death and bring to justice those responsible. This legal black hole, where extremely vulnerable victims of serious breaches of human rights committed by public officials may linger for the rest of their lives without any possible way of exercising their rights, warranted a principled response by the Court. Regrettably, nothing of the kind was forthcoming.

The Court's case-specific reasoning

3. My point of discontent lies in the fact that the majority chose to approach the legal issue at stake in a casuistic and restricted manner, ignoring the need for a firm statement on a matter of principle, namely the requisites for representation in international human rights law. The judgment was simply downgraded to an act of indulgence on the part of the Court, which was willing to close its eyes to the rigidity of the requirements of the concept of legal representation under the European Convention on Human Rights ("the Convention") and the Rules of Court in "the exceptional circumstances of this case" (see paragraphs 112 and 160 of the judgment), and to admit the CLR as a "*de facto* representative of Mr Câmpeanu" (see paragraph 114 of the judgment). To use the words of Judge Bonello, this is yet another example of the "patchwork case-law" to which the Court sometimes resorts when faced with issues of principle[1].

4. Contrary to the statement made in paragraph 110 of the judgment, I consider that the fact that the domestic courts and other public authorities accepted the CLR as having standing to act on behalf of the victim is irrelevant. Otherwise, that would make accountability for a human rights violation dependent on the *de facto* acknowledgment of the applicant by those same institutions which might be responsible for the violation. Also irrelevant is the close link established in the last sentence of paragraph 111 of the judgment between the nature of the grievance (an Article 2 complaint) and the right of the CLR to act on behalf of the victim. This supposed link prejudices applications based exclusively or cumulatively on Articles 3, 4 or 5 of the Convention, and therefore on situations where an extremely vulnerable person has been tortured, ill-treated, enslaved or illegally detained and is not in a position to exercise his or her right of access to a court. Furthermore, in relation to Article 2 cases, I do not agree with the statement that the applicant must have become involved as a representative before the alleged victim's death. In the case at hand, it is certainly a fiction to assume that the CLR became "involved as a representative" on the day of Mr Câmpeanu's death (see paragraph 111 of the judgment). The only action undertaken by the CLR was to take notice of Mr Câmpeanu's deplorable situation and to suggest that the hospital's manager transfer him to another facility, and this laudable, but limited, action by the CLR cannot be characterised as "legal representation" for the purposes of national law or the Convention. Putting fictions aside, the Court does not have to consider whether the applicant has ever interviewed the

[1] See Judge Bonello's separate opinion in *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, ECHR 2011. I have already had the opportunity to draw attention to this unfortunate method of reasoning and the problems it raises in my separate opinions appended to the judgments of *Fabris v. France* [GC], no. 16574/08, ECHR 2013, and *De Souza Ribeiro v. France* [GC], no. 22689/07, ECHR 2012.

alleged victim of human rights, or even seen him or her alive, because that would make the application depend on fortuitous facts which are not within the applicant's power.

5. More importantly, the majority's reasoning is logically contradictory in itself. On the one hand, they affirm that the case at hand is "exceptional" (see paragraph 112 of the judgment), but on the other hand, they consider that this case reveals "the existence of a wider problem calling for [the Court] to indicate general measures for the execution of its judgment" (see paragraph 160 of the judgment). If the case reveals a wider problem, then it is not exceptional. Ultimately, the majority acknowledge that this is not an exceptional case, but this acknowledgment is conceded only for the purpose of imposing a positive obligation on the respondent State. This way of proceeding based on double standards is not acceptable. It is not acceptable that the same set of facts is exceptional for the purpose of the definition of the Court's remit and the conditions of admissibility of applications, whereas it is not exceptional and even "reveals a wider problem" for the purpose of imposing positive obligations on the respondent State.

6. In the end, the majority have one sole true argument in support of the admissibility of the CLR's application as a representative of the deceased teenager, lodged with the Court after his death without any power of attorney. The argument is purely consequentialist: "To find otherwise would amount to preventing such serious allegations of a violation of the Convention from being examined at an international level..." (see paragraph 112 of the judgment). Hence, the majority admit the applicant association as a "representative" of the victim because they want to examine the alleged violation, and rejecting the application would prevent them from doing so. This self-authenticating proposition begs the question. Such a strictly opportunistic and utilitarian case-sifting methodology cannot in my view suffice. The words that follow in the argument are even less fortunate: "...with the risk that the respondent State might escape accountability under the Convention". Whilst expressing the purpose of ensuring that the respondent State is held accountable, which is again stressed in the next sentence of the same paragraph, the majority imply that the selection of the case for examination is, ultimately, determined by the need to punish the respondent State with a finding of a violation, and the subsequent imposition of general remedial measures. In simpler terms, this line of argument puts the cart before the horse.

7. Finally, in stressing the "exceptional" character of the case, the majority regrettably close the door to any future extension of the present finding, concerning the situation of a mentally disabled person, to cover other victims of human rights violations, such as elderly people or members of minorities or groups facing discrimination, who might have had no access to justice in their own countries. The reason is quite obvious: exceptional findings cannot be extended to other situations. What I regret

most is the fact that, by treating this case on the basis of the "exceptional circumstances", the majority have in fact assumed that the Convention is not a living instrument and does not have to adapt to other new circumstances where the applicability of a concept of *de facto* representation might be called for[2]. Moreover, the implicit claim that each case is *sui generis* is subversive in international law, indeed in any field of law, since it frequently leads, as experience has shown, to a discretionary understanding of justice determined by non-legal – that is, political, social or purely emotional – considerations on the part of those tasked with the sifting of cases. The input of the court is determined not by the intrinsic merit of the claim, but by the intended strategic output. This brings me closer to the core of the case.

An alternative principled reasoning

8. Instead of relying on the "exceptional circumstances" of the case, and basing the purported legal solution on case-specific reasoning, I would have preferred to rise above the specificities of the case, and address the question of principle raised by the case: what are the contours of the concept of representation of extremely vulnerable persons before the Court?

It seems to me that this question could, and should, have been answered on the basis of the general principle of equality before the law applied in accordance with the traditional instruments for the interpretation of international human rights law. I refer to the theory of interpretation of human rights treaties in a way which not only secures their *effet utile* (*ut res magis valeat quam pereat*)[3], but is also the most protective of the rights and freedoms which they enshrine[4]. Both these interpretation theories evidently apply to the conditions of admissibility of applications[5].

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[2] Evolutive interpretation of human rights treaty law has been the position adopted by the Court since *Tyrer v. the United Kingdom* (25 April 1978, § 31, Series A no. 26), as well as by the Inter-American Court of Human Rights since *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Series A no. 16, Advisory Opinion OC–16/99, 1 October 1999, paragraph 114, and *Case of the "Street Children" (Villagrán Morales et al.)*, Series C no. 63, judgment of 19 November 1999, paragraph 193, and the United Nations Human Rights Committee, since *Judge v. Canada*, no. 829/1998, communication of 5 August 2002, UN Doc. CCPR/C/78/D/829/1998, paragraph 10.3.

[3] See *Airey v. Ireland*, 9 October 1979, § 24, Series A no. 32, and in general international law, among many other references, *Lighthouses Case between France and Greece*, judgment (1934), PCIJ Series A/B no. 62, p. 27, *Territorial Dispute (Libya/Chad)*, judgment, *ICJ Reports* 1994, p. 21, and *Dispute between Argentina and Chile concerning the Beagle Channel* (1977) 21 RIAA 231.

[4] The Court established this principle in *Wemhoff v. Germany*, 27 June 1968, § 8, Series A no. 7. The Inter-American Court of Human Rights did the same in *Compulsory Membership in an Association prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Series A No. 5, Advisory Opinion

9. The principle of equality permeates the whole European human rights protection system, and is particularly visible in Article 14 of the Convention and Article 1 of Protocol No. 12, as well as Article 20 and Article E in Part V of the Revised European Social Charter, Articles 4, 6 (2) and 9 of the Framework Convention for the Protection of National Minorities, Article 3 of the Council of Europe Convention on Action Against Trafficking in Human Beings, Article 2 (1) of the Council of Europe Convention on Access to Official Documents and Articles 3 to 5 of the Additional Protocol to the Convention on Cybercrime[6]. Applied in the light of the interpretative theories referred to above, the principle of equality could have filled the legal gap that I mentioned earlier, by providing a principled basis for expanding the limits of the concept of representation for the purposes of the Convention. When confronted with a situation where the domestic authorities ignored the fate of the alleged victim of human rights violations, and he or she was unable to reach the Court by his or her own means or those of a relative, legal guardian or representative, the Court has to interpret the conditions of admissibility of applications in the broadest possible way in order to ensure that the victim's right of access to the European human rights protection system is effective. Only such an interpretation of Article 34 of the Convention accommodates the intrinsically different factual situation of extremely vulnerable persons who are or have been victims of human rights violations and are deprived of legal representation[7]. Any other interpretation, which would equate the situation of extremely vulnerable persons to that of other victims of human

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OC-5/85, 13 November 1985, paragraph 52, and *Baena-Ricardo et al. v. Panama*, Series C No. 72, judgment of 2 February 2001, paragraph 189. There is therefore no *in dubio mitius* presumptive rule that human rights treaties should be interpreted in such a way as to minimise encroachment on State sovereignty.

[5] See *S.P., D.P., A.T. v. the United Kingdom*, no. 23715/94, Commission decision of 20 May 1996; *İlhan v. Turkey* [GC], no. 22277/93, § 55, ECHR 2000-VII; and *Y.F. v. Turkey*, no. 24209/94, § 29, ECHR 2003-IX.

[6] It is worth pointing out that the Court has applied Article 14 to grounds of discrimination not explicitly mentioned in that provision, such as sexual orientation (*Salgueiro da Silva Mouta v. Portugal*, no. 33290/96, ECHR 1999-IX) and mental or physical disabilities (*Glor v. Switzerland*, no. 13444/04, § 53, ECHR 2009). This latter judgment is particularly important in view of the fact that it made explicit reference to the United Nations Convention on the Rights of Persons with Disabilities (CRPD) as the basis for "the existence of a European and worldwide consensus on the need to protect people with disabilities from discriminatory treatment" despite the fact that the relevant events had taken place before the adoption of the CRPD by the General Assembly, and regardless of the fact that the respondent State had not signed it. On two other occasions, the Court has referred to the CRPD, even though the relevant events had occurred before the respondent States signed it (*Alajos Kiss v. Hungary*, no. 38832/06, § 44, 20 May 2010, and *Jasinskis v. Latvia*, no. 45744/08, § 40, 21 December 2010).

[7] Although Mr Câmpeanu's "wholly different" factual situation was acknowledged by the Court itself in paragraph 108 of the judgment, it drew no legal inferences from this acknowledgment.

rights violations, would in fact result in discriminatory treatment of the former[8]. Different situations must be treated differently[9]. Thus, the right of access to court for extremely vulnerable persons warrants positive discrimination in favour of these persons when assessing their representation requirements before the Court[10].

10. The proposed principled construction of the Convention is supported by a literal interpretation of the final sentence of Article 34 of the Convention. Extremely vulnerable persons who have been hindered "in any way" – that is, by actions or omissions on the part of the respondent State –

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[8] The equation of different situations would amount to "indirect discrimination", which occurs when a provision, criterion or practice would put persons with a characteristic associated with a prohibited ground at a particular disadvantage compared with other persons. For the various facets of the principle of equality, and the Convention obligation to extend favourable provisions to persons who are discriminated against, see my separate opinion in *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, ECHR 2013.

[9] On reverse or positive discrimination in favour of minorities and vulnerable persons who do not have access to basic public goods, such as education and justice, as a basic requirement of justice, see Dworkin, *Taking Rights Seriously*, 1977, pp. 223-240, *A Matter of Principle*, 1986, pp. 293-333, *Freedom's Law. The Moral Reading of the American Constitution*, 1996, pp. 26-29, *Law's Empire*, 1998, pp. 386-397, and *Sovereign Virtue*, 2001, pp. 409-426.

[10] See the *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* (merits), 23 July 1968, p. 34, § 10, Series A no. 6: "certain legal inequalities tend only to correct factual inequalities". Thus, the State obligation to counterbalance factual inequalities and pay special attention to the most vulnerable emanates directly from the Convention. Within the European framework, see Article 15, paragraph 3, of the Revised European Social Charter, Recommendation Rec(2006)5 of the Committee of Ministers to Member States on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015, and especially its Action Line no. 12 on legal protection, referring to the objective "To ensure effective access to justice for persons with disabilities on an equal basis with others" and to the specific action to be taken by States to "encourage non-governmental advocacy networks working in defence of people with disabilities' human rights", Recommendation 1592 (2003) of the Parliamentary Assembly towards full social inclusion of people with disabilities, Recommendation No. R (99) 4 of the Committee of Ministers to member States on principles concerning the legal protection of incapable adults; the European Union Fundamental Rights Agency and the Council of Europe, *Handbook on European non-discrimination law*, 2010, p. 78, the Fundamental Rights Agency, *Access to justice in Europe: an overview of challenges and opportunities*, 2011, pp. 37-54; the European Network of Equality Bodies, *Influencing the law through legal proceedings – The powers and practices of equality bodies*, 2010, p. 6; and the European Commission against Racism and Intolerance (ECRI) General Policy Recommendation no. 7, 13 December 2002, paragraph 25. In the universal context, see also Article 13 of the CRPD, which imposes an obligation to "facilitate" access to and participation in justice for persons with disabilities, and the Committee on the Rights of Persons with Disabilities' General Comment No. 1 (2014), CRPD/C/GC/1, 19 May 2014, paragraphs 24-31 and 34, on State obligations deriving from the United Nations Convention, in particular the obligation to provide support in the exercise of legal capacity.

in the exercise of their rights must be provided with an alternative means of access to the Court. The present case is, in fact, the perfect example of a continuing omission by the respondent State, which, by not providing any kind of legal representation or guardianship to Mr Câmpeanu while he was alive and while there was an arguable claim against the State as regards the health care and educational treatment he received, did indeed hinder the exercise of his Convention and domestic rights[11].

11. Based on this proposed principled interpretation of the Convention, the Court should have established a concept of *de facto* representation, for cases involving extremely vulnerable victims who have no relatives, legal guardians or representatives. These two cumulative conditions, namely the extreme vulnerability of the alleged victim and the absence of any relatives, legal guardians or representatives, should have been laid down clearly by the Court[12]. Extreme vulnerability of a person is a broad concept that should include, for the above purposes, people of tender age, or elderly, gravely sick or disabled people, people belonging to minorities, or groups subject to discrimination based on race, ethnicity, sex, sexual orientation or any other ground. The absence of relatives, legal guardians or representatives is an additional condition that must be assessed according to the facts known to the authorities at the material time. What is relevant is the fact that the victim has no known next-of-kin and no representative or guardian appointed by the competent authority to take care of his or her interests[13]. These two conditions would have provided legal certainty to the Contracting Parties to the Convention and guidance to any interested institutions and persons who might be willing in future to lodge applications on behalf of other extremely vulnerable victims of human rights violations. By not providing clear and general criteria, and by linking its finding to the "extraordinary circumstances" of the case, the Court's judgment not only weakens the authority of its reasoning and restricts the scope of its findings and their interpretative value, but also provides less guidance, or no guidance at all, to States Parties and interested institutions and persons who might be willing to intervene in favour of helpless, vulnerable victims of human rights violations. Instead of extending the benefit of its work to as

[11] In a way, the principle of good faith in the performance of treaties (Article 31 of the Vienna Convention on the Law of Treaties) is also engaged, since the respondent State cannot plead its own wrong. But this principle alone could not have resolved the procedural question raised by the present case, which required not only differentiation of the situation of extremely vulnerable persons, but also a measure of positive discrimination which could provide them with access to the right of which they had been deprived. Only the principle of equality, in its positive facet, could go that far.

[12] A similar approach was rightly suggested to the Court by the Council of Europe Commissioner for Human Rights in his submissions to the Grand Chamber (14 October 2011, paragraph 39).

[13] This condition is formulated explicitly in Rule 96 (b) *in fine* of the Rules of Procedure of the United Nations Human Rights Committee.

many individuals as possible, the Court has restricted the reach of its work to the bare confines of the present case.

12. Judge-made law is inevitable in international law, and particularly in international human rights law, in view of the inherent indeterminacy of legal terminology and the high potential for conflicts between norms in this area of law, which is intimately connected with the fundamentals of human life in society[14]. The Janus-faced nature of the interpretation of international human rights texts – both remedial and backward-looking on the one hand and promotional and forward-looking on the other – further propels judges into becoming "subsidiary legislators" (*Ersatzgesetzgeber*). But the promotional role of international courts, which is aimed ultimately at the furtherance of human rights across the domestic jurisdictions under their supervision, is circumscribed by the judge's responsibility to be "faithful" to pre-existing treaty law, and especially to the legal principles upon which it is based[15]. In the Convention, these principles are the "principles of law recognised by civilised nations", to which explicit reference is made in Article 7. Such principles are posited in the domestic laws of European and non-European nations at any given moment[16]. Only such legal principles

[14] This is not the moment to take a position on the dispute about the alleged non-existence of a general method of treaty interpretation and the alleged methodological difference between the interpretation of international human rights law and other international law, or between contractual and law-making treaties. In a perfunctory way, I would add at this juncture that I depart from the traditional position that there are "self-contained regimes" within international law (see, for example, *Case of the SS "Wimbledon"* (1923), PCIJ Series A no. 1, p. 15, and *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, Judgment, *ICJ Reports 1980*, p. 40). Without prejudice to the tenets of a systemic interpretation of treaties, I do not think that rigid boundaries can be established between international human rights law and other international law (see, for example, the recent practice of the ICJ in *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, *ICJ Reports 2010*, p. 662-673), and therefore I assume that the same interpretative methods can be applied in both fields of international law. One of the practical consequences of this assumption is that I favour cross-fertilisation of soft-law instruments and case-law of international courts and supervisory bodies. International courts are not isolated "little empires", as Judges Pellonpää and Bratza put it in their concurring opinion appended to *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, ECHR 2001-XI.

[15] In the *South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)*, Second Phase, Judgment of 18 July 1966, *ICJ Reports 1966*, p. 6, the ICJ stated that it "can take account of moral principles only in so far as these are given sufficient expression in legal form". On textual fidelity or *Gesetztreu* as a limit for judge-made law, see Esser, *Vorverständnis und Methodenwahl in der Rechtsfindung. Rationalitätsgarantien der richterlichen Entscheidungspraxis*, 1970, pp. 196-199, 283-289, Kriele, *Recht, Vernunft, Wirklichkeit*, 1990, pp. 519-538, and Dworkin, *Justice in Robes*, 2006, pp. 118-138.

[16] See *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 71, ECHR 2008. In fact, at the plenary session of the Consultative Assembly on 7 September 1949 (see the *Travaux Préparatoires* of the Convention, "References to the notion of the general principles of law recognised by civilised nations" (CDH(74)37)), Mr Teitgen stated: "organised international protection shall have as its aim, among other things, to ensure that internal laws on

can provide a solid basis for the interpretative work of the international judge, and for limiting his or her remit. Only they can furnish the intersubjectively controllable *passerelle* between the letter of the treaty and the "law of the case" when no specific rules are applicable[17]. Only they can assist the judge in his or her tasks of optimising conflicting rights and freedoms[18], distinguishing cases from one another and overruling a precedent[19]. By preferring fact-sensitive reasoning based on the "exceptional circumstances of this case", and not displaying greater congruence with the principles embedded in the Convention, in practical terms the Court exponentially increases the impact of the element of irreducible subjectivity in the adjudicative process, and by so doing, it promotes the very judicial activism that it apparently seeks to limit. Without solid principled grounds, judge-made law is nothing but a disguised policy decision in the epiphenomenal form of a self-fulfilling prophecy based on the judge's personal predilections[20].

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guaranteed freedoms are in conformity with the fundamental principles of law recognised by civilised nations. What are these principles? They are laid down in much doctrinal work and by a jurisprudence which is their authority. These are the principles and legal rules which, since they are formulated and sanctioned by the internal law of all civilised nations at any given moment, can therefore be regarded as constituting a principle of general common law, applicable throughout the whole of international society."

[17] If this is true for national judges, it is even truer for international judges, in the light of Article 38 (1) (c) of the ICJ Statute, the preamble to the Vienna Convention on the Law of Treaties, and the UNIDROIT Principles of International Commercial Contracts. On principles as "norm-sources", see, among others, Pellet, annotation of Article 38, and Kolb, note on General Principles of Procedural Law, in Zimmermann and Others, *The Statute of the International Court of Justice: A Commentary*, 2006, pp. 766-773 and 794-805 respectively; Thirlway, *The Law and Procedure of the International Court of Justice*, volume 1, 2013, pp. 232-246, and volume II, 2013, pp. 1201-1205; and Larenz and Canaris, *Methodenlehre der Rechtswissenschaft*, 1995, pp. 240-241.

[18] On principles as *Optimierungsgebote* in domestic law, see, for example, the contributions by Alexy and Koch in Alexy and others, *Elemente einer juristischen Begründungslehre*, 2003, pp. 217-298, and Alexy, *A Theory of Constitutional Rights*, 2009, pp. 401 and 405, and in international law, Ducoulombier, *Les conflits de droits fondamentaux devant la Cour européenne des droits de l'Homme*, 2011, pp. 564-567.

[19] See Alexy, *A Theory of Legal Argumentation: The Theory of Rational Discourse as Theory of Legal Justification*, 2009, pp. 279 and 285.

[20] The most emblematic advocate of this working method, Justice Holmes, argued that principles do not solve cases. Law is, in his view, what the courts say it is, by deciding first the case and determining afterwards the grounds for the decision. His voice was not alone. In his autobiography, Justice Douglas relates that Chief Justice Hughes once told him: "Justice Douglas, you must remember one thing. At the constitutional level where we work, 90 percent of any decision is emotional. The rational part of us supplies the reasons for supporting our predilections." For this reason, Justice Frankfurter would say: "The Constitution is the Supreme Court". To all this, Rawls gave the famous rebuttal: "The Constitution is not what the Court says it is" (*Political Liberalism*, 1993, p. 237).

The Court's judgment as an act of *auctoritas*

13. I started by referring to the procedural problem raised by this case. I added that this was the problem raised on the surface, because below the surface a much bigger problem lies before the Court, namely how it envisages its adjudicative power and the impact of its judgments and decisions on the development of international law and the furtherance of human rights protection in Europe, as the preamble to the Convention puts it. The Court may envisage it in one of two ways, as an act of *auctoritas* or as an act of *potestas*.

Auctoritas is exercised by way of reasoning, an intellectual act which aims to convince the addressees of the Court's judgments and decisions and the much wider audience of the legal community and the public in general and gains its legitimacy through the intrinsic strength of the principles upon which those judgments and decisions are based and the coherence and persuasiveness of the inferences drawn from these principles for the case at hand[21]. In this case, the decision-maker – that is, the judges of the Court – is guided by a complex set of criteria of practical rationality with a view to weighing up which is the most coherent of the propositions presented by the parties[22].

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[21] Principles are "starting points" for case sifting and shaping the case rule, on the basis of a "universal rationality-bound concept of legal rationality" (Esser, *Vorverständnis und Methodenwahl*, cited above, p. 212, and *Grundsatz und Norm in der richterlichen Fortbildung des Privatrechts: Rechtsvergleichende Beiträge zur Rechtsquellen- und Interpretationslehre*, 1990, pp. 183-186). Hence, a judicial decision deals with matters of principle, not matters of compromise and strategy resolved according to arguments of political policy, general welfare or public interest (Dworkin, *Freedom's Law*, cited above, p. 83, and *A Matter of Principle*, cited above, p. 11). In this context, the publication of separate opinions plays the important role of avoiding the fiction of unanimity which in reality results from a negotiation that sacrifices the best possible solution to the lowest common denominator (Kriele, *Theorie der Rechtsgewinnung entwickelt am Problem der Verfassungsinterpretation*, 1976, p. 309).

[22] Without entering into the dispute of the applicability of general discursive coherence criteria to the field of legal reasoning, it is worth mentioning the fundamental work by Alexy and Peczenik, who listed the following ten criteria by reference to which discursive coherence can be evaluated: (1) the number of supportive relations, (2) the length of the supportive chains, (3) the strength of the support, (4) the connection between supportive chains, (5) priority orders between arguments, (6) reciprocal justification, (7) generality, (8) conceptual cross-connections, (9) number of cases a theory covers, and (10) diversity of fields of life to which the theory is applicable (Alexy and Peczenik, "The Concept of Coherence and Its Significance for Discursive Rationality", in *Ratio Juris*, 1990, pp. 130-147). One of the basic criteria formulated by the authors was that "When justifying a statement, one should support it with a chain of reasons as long as possible". In fact, the use of legal principles implies a special onus of argumentation and justification imposed on the judge (see Larenz and Canaris, *Methodenlehre*, cited above, p. 247; Bydlinski, *Grundzüge der juristischen Methodenlehre*, 2005, p. 72; and Progl, *Der Prinzipienbegriff: Seine Bedeutung für die juristische Argumentation und seine Verwendung in den Urteilen des Bundesgerichtshofes für Zivilsachen*, 2001, p. 132).

Potestas is exercised by way of a decision, an act of will whose legitimacy lies in the power which the decision-maker is acknowledged as having to take the decision in accordance with a procedure. In this case, guided by a pragmatic assessment of the consequences of its decision, the decision-maker is moved to act whenever the advantages of a course of action outweigh its disadvantages[23].

14. The Court must evidently exercise its power within the confines of the Convention, and the legitimacy of its judgments and decisions is dependent on formal compliance with the admissibility conditions and the procedure laid down in the Convention. While performing its tasks under the Convention, the Court must take into consideration, but not be conditioned by, the consequences of its judgments and decisions, not only for the parties involved, but also for all Contracting Parties to the Convention[24]. To this extent, the Court's judgments and decisions are acts of *potestas*. But the Court should also aim to provide authoritative legal statements based on the intrinsic strength of the principles enshrined in the Convention and developed in the Court's own case-law in the light of the "general principles recognised by civilised nations". For it is through principled reasoning that judicial statements are normative, and it is only by being normative that they can be fully intelligible and implemented[25]. In their substance, the Court's judgments and decisions are acts of *auctoritas*, which must avoid a fallacious over-simplification of the factual and legal problems raised by the case and resist the easy temptation of convenient omissions. Such *auctoritas* can be exercised only when the judge shies away from a one-sided selection of the domestic and international case-law and does not turn a blind eye to fundamental scholarly work pertinent to the discussion of the case under adjudication[26]. Most importantly of all, the consistency and coherency of the Court's output cannot be secured if the

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[23] See Esser, *Grundsatz und Norm*, cited above, pp. 235-241, and Dworkin, *Taking Rights Seriously*, cited above, pp. 22-28, 90-100, 273-278, and *Justice in Robes*, cited above, pp. 80-81, 248-250, on the two different types of argumentation based on arguments of principle and arguments of utilitarian or ideal policy.

[24] The consideration of consequences in legal reasoning results not only from the finalistic structure of legal provisions, as Esser has demonstrated in his *Vorverständnis und Methodenwahl*, cited above, p. 143, but more generally from the use of such arguments as the *ad absurdum* argument and such maxims as *summum ius summa iniuria*, as Perelman explained in *Logique juridique. Nouvelle rhétorique*, 1979, pp. 87-96, and as Deckert expounded in her list of twenty-three arguments drawn from consequences, in *Folgenorientierung in der Rechtsanwendung*, 1995, p. 252.

[25] Normative is used here in the sense of universalisable, as for example in Kaufmann, *Das Verfahren der Rechtsgewinnung. Eine rationale Analyse*, 1999, p. 85, and MacCormick, *Rhetoric and The Rule of Law: A Theory of Legal Reasoning*, 2005, pp. 148-149.

[26] As Wittgenstein, *Philosophische Untersuchungen*, I, no. 593, put it, one of the main causes of intellectual error is a "unilateral diet" (*einseitige Diät*), where one feeds one's thought with only one kind of example. This "pragmatic error" (*pragmatische Fehler*) is frequent in legal reasoning (Haft, *Juristiche Rhetorik*, 2009, p. 149).

judge runs away from definitional issues, leaving to legal writers the sometimes extremely difficult exercise of putting order into a chaotic sample of disparate legal statements[27]. Otherwise, the direction of the Court's case-law will rely on an opportunistic, cherry-picked list of cases, selected and adjudicated in accordance with an unpredictable measuring stick, which can vary according to the power of the respondent State and the notoriety of the alleged victim involved in the dispute. Otherwise, the domestic courts will be strongly tempted to neglect, or even purposely flout, their duty to implement the Court's case-law, when they are faced with judgments and decisions based on vague, succinct formulations that they do not understand. Otherwise, the lack of clarity and guidance of the Court's judgments and decisions will prompt more and more applications, drowning the Court in a vicious circle of case-specific jurisprudence, an increasing number of applications and discretionary disposal of cases. Otherwise, the Court will shift to politicians, namely the Committee of Ministers, the quintessential judicial tasks of standard-setting and affording general remedies.

15. The pressure of numbers must not be taken as the decisive factor in the choice between the two mentioned approaches. The increasing demand for the Court to respond to human rights violations across Europe brings additional responsibility to the institution, but does not discharge the Court from all its Convention obligations, including those resulting from the overarching provision of Article 45 of the Convention. Justice cannot be sacrificed on the altar of expediency. It is precisely at a time of growth that sufficiently clear reasons are most needed, not only for all the Court's final Committee, Chamber and Grand Chamber decisions and judgments (output), but also for the sifting (input) of cases by the single judge and the Grand Chamber panel. A minimalist form of reasoning only weakens the Court's credibility. No reasoning at all is even worse. It simply kills all credibility of the Court as a champion of procedural justice and undermines its current efforts to cope with the many challenges it is faced with[28].

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[27] At this juncture it is useful to remember the words of Cardozo on the courts' failure to put forward a comprehensive definition of the due process clause: "The question is how long we are to be satisfied with a series of *ad hoc* conclusions. It is all very well to go on pricking the lines, but the time must come when we shall do prudently to look them over, and see whether they make a pattern or a medley of scraps and patches" (*Selected Writings*, 1947, p. 311).

[28] See *Maria Cruz Achabal Puertas v. Spain*, United Nations Human Rights Committee, communication no. 1945/2010, 18 June 2013, where the author was informed that a Committee of the Court, composed of three judges, had decided to declare her application inadmissible, since it did not find "any appearance of a violation of the rights and freedoms guaranteed by the Convention or its Protocols", but the Human Rights Committee concluded that "the limited reasoning contained in the succinct terms of the Court's letter does not allow the Committee to assume that the examination included sufficient consideration of the merits", and therefore decided there was no obstacle to its examining the communication under Article 5, paragraph 2 (a), of the Optional Protocol to the

Conclusion

16. Following the applicant association's main argument that the "public interest requires a decision on the merits of this case"[29], the majority pursued the utilitarian maxim *salus publica suprema lex est*, and took the opportunity afforded by this case to impose positive general obligations on the respondent State in relation to "mentally disabled persons in a situation comparable to that of Mr Câmpeanu" (see paragraph 161 of the judgment). I disagree with this methodological approach. In order for this case not to be an exhortation to bend the law on account of exceptional individual hardship, and consequently a free-riding exercise of judicial creativity and reconstruction of treaty obligations, the Court should have addressed the case on the basis of legal principles, namely the principle of equality before the law. If we cannot delude ourselves into dreaming of uniquely correct legal answers to hard cases, we can at least assume that the exercise of distilling from the principle of equality, which is firmly embedded in the Convention and the European human rights protection system, a rule on "*de facto* representation" before the Court would have avoided a strictly consequentialist application of the Convention.

The methodology of the Court's sifting and assessment of cases must be above any suspicion of arbitrariness. That impression would betray the remarkable 60-year-old history of this formidable institution and undermine the efforts of many generations of dedicated judges, lawyers and linguists to pursue the ideal of the construction of a pan-European standard of human rights. The present case is a good example of how the Court sometimes reaches the right results by unconvincing, awkward means. Some of its working methods must change in order to achieve the right results by righteous means. Legal principles can provide the appropriate tools for that task, since a court of law is, to borrow the expression of Ronald Dworkin, the privileged *forum* of legal principles[30].

International Covenant on Civil and Political Rights and found that that the facts before it disclosed a violation of Article 7 of the Covenant, read independently and in conjunction with Article 2, paragraph 3, of the Covenant. The materials submitted to the Court by the author were similar to those presented to the Human Rights Committee. The Court cannot, as it so frequently does, require the domestic courts to indicate with sufficient clarity the grounds on which they base their decision, while at the same time not living up to the same standards itself. One could read the Human Rights Committee's message as implying that the limits of forbearance of an unacceptable policy of judicial pragmatism have been reached, as Schwarzenberger once wrote (*International Law as applied by International Courts and Tribunals*, volume IV, 1986, p. 627).

[29] See page 8 of the applicant association's submissions to the Grand Chamber of 3 June 2013.

[30] Dworkin, *A Matter of Principle*, 1986, p. 33.

JOINT PARTLY DISSENTING OPINION OF JUDGES SPIELMANN, BIANKU AND NUSSBERGER

We have voted against the finding of the majority that it is not necessary to examine the complaint under Article 3, taken alone or in conjunction with Article 13 of the Convention.

First, we consider that the finding under Article 2 does not cover the violation of Article 3 in Mr Câmpeanu's case. As the facts of the case reveal, Mr Câmpeanu was diagnosed as HIV-positive when he was 5 years old, was later diagnosed with "profound intellectual disability" (see paragraph 7 of the judgment) and developed pulmonary tuberculosis, pneumonia and chronic hepatitis. It seems clear from the facts of the case that the particular situation of Mr Câmpeanu did not meet with an appropriate response and treatment on the part of the competent authorities. On that basis the majority rightly find a violation of Article 2 of the Convention. While we agree with this conclusion, we do not agree that no separate issues arise under Article 3 of the Convention. We are of the opinion that the Romanian authorities should have taken concrete steps to protect Mr Câmpeanu from the suffering related to his condition, and of which the authorities were perfectly aware (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 73, ECHR 2001-V). Mr Câmpeanu's death was the result of a long period during which the authorities' response to his situation was insufficient and inadequate; during this time he clearly suffered a violation of his Article 3 substantive rights, having received neither appropriate medical treatment nor even food and adequate shelter in the medical centres where he was kept. The "psychiatric and physical degradation" of Mr Câmpeanu when he was admitted to the CMSC (see paragraph 14 of the judgment) or when he was visited by the CLR team at the PMH (see paragraph 23 of the judgment) were evidence of long periods of neglect based on a complete lack of compassion.

Therefore, this case has to be distinguished from those cases in which the death, or threats to the life, of the applicants have been a direct and immediate consequence of the use of force and in which the Court has found no separate issue under Article 3, having regard to its finding of a breach of Article 2 (see, for example, *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, 20 December 2007, and *Shchiborshch and Kuzmina v. Russia*, no. 5269/08, 16 January 2014).

Finding a separate violation of Article 3 could also contribute to enhancing the protection under Article 2 in such cases. If over a long period of time the positive obligations under Article 3 are not fulfilled by the authorities and no appropriate treatment is provided for the most vulnerable individuals, it might be too late to save these individuals' lives and thus to fulfil the authorities' obligations under Article 2.

Second, we find it regrettable that the Court has omitted the opportunity to clarify further the question of *locus standi* of a non-governmental organisation in connection with a complaint on the basis of Article 3. The gist of the case lies in determining the extent to which the most vulnerable persons' interests can be defended before the Court by non-governmental organisations acting on their behalf, but without having any "close link" or "personal interest" as required by the Court's case-law. The situation concerning Article 2 complaints is fundamentally different from Article 3 complaints in this respect. Article 2 complaints based on the victim's death can never be brought before the Court by the victims themselves, whereas this is not true for Article 3 complaints. This is one of the aspects highlighted by the majority in their finding on the *locus standi* of the applicant (see paragraph 112 of the judgment). A separate analysis of the complaint of a violation of Article 3 of the Convention would have enabled the Court to also explicitly elaborate on the related questions in respect of Article 3.

JOINT PARTLY DISSENTING OPINION OF JUDGES ZIEMELE AND BIANKU

1. We regrettably do not agree with the conclusion of the majority that there is no need for a separate ruling concerning Article 14 taken together with Article 2 in this case.

2. Turning to the circumstances of the case, we are stunned by the situation of Mr Câmpeanu. He was born in September 1985 and was of Roma ethnicity. His father was unknown and he was abandoned by his mother at birth; he was diagnosed at the age of 5 with HIV and later with profound intellectual disability and other acute medical problems. It would be very difficult to find another case examined by the Court in which the vulnerability of an applicant is based on so many grounds covered by Article 14 of the Convention. In our opinion, just one of these grounds would suffice to require the national authorities to devote particular attention to Mr Câmpeanu's situation. The facts of the case, as set out in the judgment, clearly indicate that the measures taken by the authorities were totally inadequate in addressing Mr Câmpeanu's circumstances.

3. It is rather worrying that only two weeks after Mr Câmpeanu turned eighteen, the Dolj County Child Protection Panel, without any individual assessment of his extremely particular situation, suggested that he should no longer be cared for by the State as he was not enrolled in any form of education at the time. This would suffice to conclude that his situation was considered to be the same as that of any other orphan who turns eighteen in perfectly good health and is able to look after himself or herself. The confusion that followed as to the identification of the appropriate institution to deal with Mr Câmpeanu's condition is a sign of a lack of understanding and a careless approach to Mr Câmpeanu's special needs (see paragraphs 8-22 of the judgment). In addition, and this in our opinion is crucial to the Article 14 analysis, it appears that the PMH staff refused to help Mr Câmpeanu, allegedly for fear that they would contract HIV.

4. In view of the above, and also taking into account the special nature of the State's obligations as regards persons with disabilities (see, among other authorities, *Jasinskis v. Latvia*, no. 45744/08, 21 December 2010, and *Kiyutin v. Russia*, no. 2700/10, ECHR 2011), we are of the opinion that in the case of Mr Câmpeanu, a person who was in an extremely vulnerable position and completely dependent on the State institutions, there has been a violation of Article 14 taken together with Article 2 of the Convention.