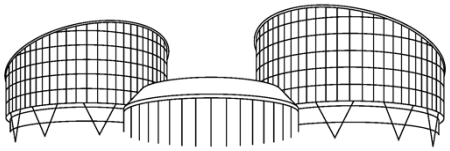

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF T.A. v. ARMENIA

(Application no. 2648/22)

JUDGMENT

STRASBOURG

6 February 2024

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

In the case of T.A. v. Armenia,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Faris Vehabović*, President*,
Anja Seibert-Fohr,
Anne Louise Bormann*, judges*,
and Valentin Nicolescu, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 2648/22) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 23 December 2021 by an Armenian national, T.A., born in 1956 and living in Artik ("the applicant") who was represented by Mr H. Alumyan, a lawyer practising in Yerevan;

the decision to give notice of the complaints under Articles 5 § 1 and 8 of the Convention concerning the applicant's allegedly unjustified confinement in a psychiatric institution and the allegedly unjustified restrictions on her private and family life as well as her correspondence, to the Armenian Government ("the Government"), represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters, and to declare inadmissible the remainder of the application;

the decision not to have the applicant's name disclosed;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the parties' observations;

Having deliberated in private on 16 January 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's placement in a psychiatric institution for compulsory treatment.

2. On 24 December 2015 the applicant filed a crime report with the police alleging six different criminal offences, including a murder and a beating that had caused the death of a person, and pointing to the alleged perpetrators of those crimes.

3. The investigation opened into the alleged crimes concluded that such crimes had never been committed. As a result, criminal proceedings were instituted against the applicant in connection with false crime reporting.

4. On 27 September 2016 a joint forensic psychological and psychiatric examination, ordered within the scope of those criminal proceedings, concluded that the applicant suffered from "organic delusional disorder", was mentally ill and needed compulsory treatment in a psychiatric institution.

5. On 26 December 2016 the investigator applied to the Shirak Regional Court ("the Regional Court") seeking to have compulsory medical measures imposed on the applicant.

6. On 9 February 2018, the Regional Court found that the applicant had filed a false crime report. It further found that the applicant lacked criminal liability on account of her mental illness and had to be subjected to compulsory treatment in a psychiatric institution.

7. Following the applicant's appeal, the Criminal Court of Appeal decided to quash the judgment of the Regional Court on procedural grounds and terminate the criminal proceedings.

8. On 25 June 2021, upon the prosecutor's appeal, the Court of Cassation quashed the decision of the Criminal Court of Appeal on procedural grounds and upheld that of the Regional Court. Consequently, the applicant was placed in a psychiatric institution on 14 July 2021.

9. On 24 January 2022 the psychiatric institution lodged an application with the Regional Court seeking to have the applicant's compulsory treatment terminated and replaced with an outpatient treatment under the supervision of a local psychiatrist on the grounds that the applicant didn't pose any danger to society, her behaviour was adequate and the family insisted on the change of the compulsory confinement imposed. The application was supported by the opinion of the psychiatric panel of the psychiatric institution which also included the applicant's doctor. The latter acted as the representative of the psychiatric institution at the ensuing court hearing.

10. On 22 February 2022, relying on statements by the applicant and her daughter denying the diagnosis as well as their unwillingness to continue the applicant's taking medication, which was considered necessary by the applicant's doctor, the Regional Court dismissed the application finding that the compulsory medical measure imposed on the applicant should be maintained. It also found that a statement made by the applicant's doctor that the applicant's relatives had made periodical requests to change the type of the compulsory medical measure left an impression that the application lodged by the psychiatric institution had been preconditioned by the persistent pressure of the applicant's relatives, rather than by the positive changes in the applicant's state of health.

11. On 5 May 2022, the Criminal Court of Appeal dismissed the applicant's appeal upholding the reasoning of the Regional Court. It further concluded that the assurances given by the applicant's daughter that the applicant would take the prescribed medicine in case of changing the imposed compulsory medical measure were misleading and aimed at creating the mere impression that the applicant's treatment would have an ongoing nature and would not be terminated.

12. On 23 December 2022 the psychiatric institution lodged another application with the Regional Court asking to terminate the applicant's

compulsory treatment and replace it with outpatient treatment under the supervision of a local psychiatrist.

13. On 9 January 2023 the Regional Court granted the application and terminated the applicant's compulsory treatment in the psychiatric institution, resulting in the applicant's release on the same date. The applicant alleged that the court had agreed to grant this measure only after she agreed to admit that she had falsely reported crimes.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

14. The applicant complains that her compulsory confinement in a psychiatric institution did not comply with the requirements of Article 5 § 1 (e) of the Convention.

15. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. The Court cannot accept the Government's argument that the applicant is no longer a victim since her compulsory treatment in a psychiatric institution has been terminated. A decision or measure favourable to the applicant is not in principle sufficient to deprive her of her status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 218, 22 December 2020). There was no acknowledgement of a violation of the applicant's right to liberty or any redress provided in that respect and she was simply released from the psychiatric institution after almost eighteen months since her confinement and inpatient treatment were no longer considered to be justified (see paragraph 13 above).

16. The general principles concerning the grounds for deprivation of liberty of persons of unsound mind have been summarised in *Ilnseher v. Germany* ([GC], nos. 10211/12 and 27505/14, §§ 126-41, 4 December 2018).

17. The Court reiterates that an individual cannot be deprived of his liberty as being of "unsound mind" unless the following three minimum conditions are satisfied: firstly, he must reliably be shown to be of unsound mind, that is, a true mental disorder must be established before a competent authority on the basis of objective medical expertise; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement; thirdly, the validity of continued confinement depends upon the persistence of such a disorder (see *Ilnseher*, cited above, § 127).

18. The Regional Court's finding that the applicant lacked criminal liability on account of her mental illness was based on the report of the joint

forensic psychological and psychiatric examination. The report explained at length the reasons why the applicant was considered to be suffering from "organic delusional disorder". The Court has no reason to criticise these conclusions. No issue, therefore, arises in connection with the first condition.

19. Moving on to the second condition, however, the Court notes that neither the report of the joint forensic psychological and psychiatric examination nor the decision of the Regional Court provided reasons as to why the applicant's condition was considered of a kind or degree warranting compulsory confinement (see paragraphs 4 and 6 above). While the report of the joint forensic psychological and psychiatric examination stated that the applicant needed compulsory treatment in a psychiatric institution, no justification was provided for such a need of compulsory confinement. It appears that the fact that the applicant was mentally ill was considered in itself sufficient to justify her compulsory placement and treatment in a psychiatric institution.

20. Furthermore, the Court has previously noted in the context of Article 5 § 1 (e) of the Convention that the detention of an individual is such a serious measure that it is only justified where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest (see *Ilnseher*, cited above, § 137; *D.R. v. Lithuania*, no. 691/15, § 94, 26 June 2018). In the present case, however, the Regional Court, when imposing on the applicant compulsory treatment in a psychiatric institution, did not consider a less severe measure in the form of outpatient supervision and compulsory treatment by a physiatrist which was one of the types of compulsory medical measures available under domestic law. It cannot therefore be said that the decision to deprive the applicant of his liberty was based on an assessment of all the relevant factors including the therapeutic prospects or the viability of less invasive alternatives, as required also by the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (see *Plesó v. Hungary*, no. 41242/08, § 68, and the international text referred therein).

21. The Court considers that the authorities should have taken a more cautious approach, given that any encroachment on the Convention rights of those belonging to particularly vulnerable groups such as psychiatric patients can be justified only by "very weighty reasons" and taking into account the fact that compulsory psychiatric hospitalisation often entails measures interfering with a person's private life and physical integrity, including medical interventions in defiance of the subject's will, such as forced administration of medication (*ibid.*, § 65).

22. The Court observes that in its decision of 22 February 2022 the Regional Court provided some reasons when it decided to dismiss the first application lodged by the psychiatric institution in respect of the applicant (see paragraph 10 above). It finds however worthy to underline that the application had been submitted with a view to the applicant's release and was

based on the opinion of an expert panel supporting it. Under domestic law (Article 465 of the Code of Criminal Procedure) an opinion of an expert panel was the necessary basis for reviewing the compulsory measure. While the Regional Court apparently found that the statements made at the hearing before it by the applicant, her daughter as well as her doctor raised questions about the well-foundedness of the application and of the expert panel's opinion supporting it, it made no serious effort to clarify these issues by, for example, seeking a new expert opinion that could have also taken into account those statements. The Court is of the view that a case, such as this one, where there had been no allegation about the applicant's imminent dangerousness to herself or others, should have incited the domestic authorities to give a more in-depth consideration of the measure by analysing the true health benefits of the applicant's treatment or the risks in the case of the absence of such treatment without imposing a disproportionate burden on the person concerned (see *Plesó,* cited above, §§ 66-68).

23. The above reasons are sufficient for the Court to conclude that the domestic authorities failed to convincingly demonstrate that the applicant's mental disorder was of a kind or degree warranting compulsory confinement (see *Plesó,* cited above, §§ 60-62 and 69, and to illustrate application of the same principles in specific cases, *Y.S. v. Russia* [Committee], no. 28131/19, §§ 23-26, 30 March 2021 and *Vershinin v. Russia* [Committee], no. 42858/06, §§ 24-26, 20 September 2016). It follows that the applicant's confinement in the psychiatric institution did not meet the requirements of 5 § 1 (e) of the Convention.

24. There has accordingly been a violation of Article 5 § 1 (e) of the Convention.

II. OTHER COMPLAINTS

25. The applicant also complained under Article 8 of the Convention that her treatment at the psychiatric institution had involved forced administration of medication, that her contacts with relatives had been restricted and her mobile phone had been taken from her on several occasions. In her observations, the applicant also alleged that she had been coerced to admit false crime reporting in order to be released (see paragraph 13 above), alleging that this had violated her rights guaranteed under Article 6 § 1 of the Convention. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has dealt with the main legal question raised by the case and that there is no need to examine the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage and 4,174 euros (EUR) in respect of costs and expenses incurred before the Court.

27. The Government contested those claims.

28. Deciding on an equitable basis, the Court awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

29. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,534 for costs and expenses incurred in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 5 § 1 (e) of the Convention concerning the applicant's unlawful confinement in a psychiatric institution admissible;

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

3. *Holds* that there is no need to examine the admissibility and merits of the remaining complaints;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts**,** to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,534 (one thousand five hundred and thirty-four euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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;

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

Done in English, and notified in writing on 6 February 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Valentin Nicolescu Acting Deputy Registrar	Faris Vehabović President