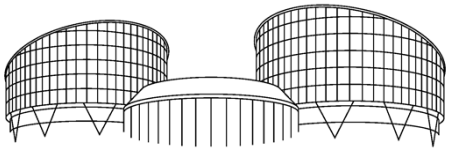

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF AFTANACHE. v. ROMANIA

(Application no. 999/19)

JUDGMENT

Art 2 • Effective investigation • Lack of proper investigation into refusal by medical personnel to administer usual insulin treatment to a diabetic in precarious condition • Art 2 applicable given the nature of the applicant's illness and the absence of any conclusive evidence of an absence of danger to his life Art 5 § 1 • Arbitrary and unlawful six-hour involuntary confinement in hospital • Deprivation of liberty not falling within any of the authorised exceptions and not necessary • Medical professionals' failure to duly consider applicant's personal circumstances

STRASBOURG

26 May 2020

FINAL

26/08/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Aftanache v. Romania,

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

Jon Fridrik Kjølbro, *President,*
Faris Vehabović,
Iulia Antoanella Motoc,
Branko Lubarda,
Carlo Ranzoni,
Stéphanie Mourou-Vikström,
Georges Ravarani, *judges,*
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Mihai Aftanache ("the applicant"), on 12 December 2018;

the decision to give notice to the Romanian Government ("the Government") of the application;

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

the decision not to have the applicant's name disclosed and the subsequent decision to lift the anonymity (Rule 47 § 4 of the Rules);

the parties' observations;

Having deliberated in private on 5 May 2020,

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

INTRODUCTION

The case concerns allegations that the applicant's life was put at risk by medical personnel from the ambulance service and hospitals, who refused to administer his insulin treatment despite his precarious condition. It also concerns allegations that the applicant was unlawfully deprived of his liberty when he was taken against his will to hospital for testing, in disregard of his actual medical condition.

THE FACTS

1. The applicant was born in 1982 and lives in Timişoara. He was represented by Ms R. Bercea, a lawyer practising in Timişoara.

2. The Government were represented by their Agent, most recently Ms O.F. Ezer, of the Ministry of Foreign Affairs.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant has been insulin-dependent since 1996 when he was first diagnosed with type-1 diabetes, and, on those grounds, has been in receipt of disability benefits.

I. THE INCIDENT OF 30 MARCH 2017 – THE APPLICANT'S ACCOUNT

5. While at home on 30 March 2017, the applicant was feeling ill – he had already been taking medication for a cold for ten days, but his state was not improving. He phoned his diabetologist, C.H., who advised him to go to the pharmacy and told him what to buy. At about 11 a.m. he went to the closest pharmacy, some 200 meters from his home. On arrival he had to sit down as he was feeling weak. He explained his situation to the pharmacist and she called an ambulance to help him.

6. An ambulance arrived at around noon. The paramedic team consisted of two nurses: M.G. and M.E., a medical student who was working as a volunteer, A., and their driver, B. M.G. suspected that the applicant had taken drugs and confronted him. The applicant denied having taken drugs and informed the paramedics about his medical condition. A blood test performed in the ambulance confirmed an imbalance in the applicant's glucose level. As there was no insulin available in the ambulance, the applicant asked the paramedics to help him walk home to take his treatment. They refused and allegedly told him that they would first take him to hospital to check what prohibited drugs he had taken, and only after that would he receive insulin.

7. The applicant called the emergency number again, but was refused assistance when he told the call centre that an ambulance was already present on the spot.

8. The applicant refused to be taken to the hospital. According to him, the paramedics then closed the ambulance door and restrained him on a stretcher. M.E., who was standing outside the ambulance, called the police for help. In the commotion, the applicant managed to alert his wife.

9. When two police officers arrived, the applicant told them that he needed to take his insulin from his home and reiterated that he was not under the influence of drugs. He asked the police officers to accompany him to his home. They refused, but assured him that he would get his insulin at the hospital. They accompanied the ambulance to the Timişoara municipal hospital (hereinafter "the TMH").

10. When he arrived at the TMH, the applicant told O.T., the doctor on duty, that he had diabetes and needed to take his insulin. The ambulance paramedics told the doctor that the applicant was on drugs. O.T. refused to administer the insulin, asking the applicant to take a blood test for prohibited drugs first. The applicant refused to take the test.

11. O.T. decided that the applicant's state did not qualify for emergency treatment and sent him to the Timişoara psychiatric hospital (hereinafter "the TPH"). He was taken there by the same ambulance under the same police escort.

12. At the TPH the applicant was again restrained on a stretcher and the medical personnel tried to inject him with medication to calm him down. The applicant refused the medication and eventually managed to untie himself.

13. The applicant telephoned C.H., his diabetologist (see paragraph 5 above). When he told her about his situation, she tried to talk to the medical personnel in TPH, but they refused to take the call. C.H. phoned a nurse whom she knew was working in the same medical facility and asked her to explain the applicant's situation to the medical team attending him.

14. Meanwhile, the applicant's wife arrived at the hospital. She was informed that the applicant would be transferred to another psychiatric hospital, JH, outside town, where he would receive appropriate treatment for his drug addiction. Together with the nurse sent by the applicant's diabetologist, she insisted that the applicant's situation had been caused by his chronic disease and that he was not a drug addict.

15. Eventually, the applicant relented and accepted to be tested for drugs. To that end, he was taken back to the TMH by the same ambulance and police escort.

16. Back in the TMH, O.T. tested the applicant's blood and confirmed that he had not taken any prohibited drugs. The applicant then received insulin, but in a dose that was different from his prescribed treatment. The blood test also revealed that the applicant was severely anaemic. Because of that, and since the applicant still had a fever, he was advised to go to the hospital for infectious diseases "VBT". He refused to go by ambulance and left with his wife, stopping at his home to take his insulin, and then went to VBT where he received adequate treatment.

17. The TMH records stated that the applicant had been suffering from hypothermia, headache, bronchial asthma and anaemia, and was insulin-dependent.

18. The TPH records also indicated that the applicant had shown "psychomotor agitation with clear consciousness, hetero-aggressive verbal and physical behaviour, vindictive and oppositionist". It stated that "the patient had been sent back to the [TMH] for medical tests and blood sugar rebalancing".

19. According to the applicant, he remained under police custody for about six hours.

II. INVESTIGATION BY THE PROSECUTOR'S OFFICE

20. On 4 April 2017 the applicant lodged a criminal complaint against the four members of the ambulance team (see paragraph 6 above) who, in his view, had withheld medical treatment on 30 March 2017, thus putting his life in danger. He described in great detail the sequence of events of 30 March 2017 (see paragraphs 5 to 16 above) and explained how his life had been put at risk.

21. On 18 April 2017, police officer E.P. called the applicant to give a statement. According to the applicant, E.P. advised him to withdraw his complaint on the grounds that the acts allegedly committed by the paramedics did not constitute crimes. She also allegedly pointed out that the applicant would not be able to produce evidence to support his assertions. The applicant refused to withdraw his complaint and insisted that the police take his statement.

22. On 16 May 2017 the applicant was fined by the police for verbal abuse against the ambulance service team on 30 March 2017. On 13 October 2017, following an objection lodged by the applicant, the Timişoara District Court annulled the police report on the grounds that the acts allegedly committed by the applicant had not been proved (*netemeinicia faptei*). Consequently, the fine was cancelled.

23. The applicant complained about E.P.'s behaviour during the investigation. His complaint was examined together with his initial complaint against the ambulance team (see paragraph 20 above).

24. On 19 June 2017 C.H. gave an out-of-court statement describing the applicant's medical history and the events of 30 March 2017. According to the applicant, her statement was not taken into account in the investigation. C.H. explained that the applicant attended regular medical check-ups for his disease, was aware of his condition and was able to detect and correct signs of blood sugar imbalance. He followed an intensive treatment scheme, with three doses of insulin during the day and another one in the evening. He had experienced one low-blood-glucose diabetic coma in 1996, two months after his initial diagnosis.

25. C.H. described as follows the events of 30 March 2017:

> "On 30 March 2017, at about noon, while I was seeing patients in my surgery ... I was contacted by phone by the patient Mihai Aftanache. I should point out that all my patients have my phone number and I promptly answer, especially to those with type-1 diabetes, as is [the applicant]'s case. He was crying and was extremely agitated. ... He told me that he had been taken by force to the hospital and had not been allowed to take his insulin. I asked him where he was. I heard him over the phone asking: 'police officer, police officer, where am I?'. He had to repeat his question several times before someone finally answered. He was eventually told that he was in the [TPH]. He told me that he had a fever and his blood sugar level was 300 mg/dl and that he was not allowed to take his insulin. I asked to talk on the phone with someone from the medical personnel, even shouted through the phone to make myself heard, but they all refused ...

> Desperate, and as I was too far to reach the hospital on time, I called a nurse who works [in the same medical complex] and who is also a patient of mine ... and asked her to go to the psychiatric ward and explain that [the applicant] was diabetic and that most certainly his metabolism was unbalanced and he needed urgent treatment to rebalance his diabetes. Unfortunately [the nurse] ... could only arrive one hour later ..."

26. On 26 October 2017 the applicant was interviewed by the prosecutor's office. The next day, he returned to the prosecutor's office with a CD containing the recording of a telephone conversation he had had about the events of 30 March 2017 with one of the paramedics present during those events.

27. The prosecutor also interviewed E.P. (see paragraphs 21 and 23 above) and her office colleague. They both denied that any pressure had been put on the applicant during his interview of 18 April 2017.

28. M.E., one of the nurses of the ambulance team, declared that the applicant had not been abused by anyone. He had been verbally aggressive and agitated, and had refused treatment. Because of his behaviour, the police officers had had to handcuff him. She said that because of his aggressive behaviour and lack of cooperation, the doctor on duty in the TPH had decided to send him for confinement in JH, but that the applicant's wife, who had meanwhile arrived at the hospital, had opposed the transfer. M.E. also alleged that throughout the incident, the applicant had refused to state his identity.

29. M.G., the other nurse of the ambulance team, declared that when the ambulance had arrived at the pharmacy they had found the applicant, who had told them that he was diabetic and was not feeling well. The team had dispensed medical care and had taken the decision to take the applicant to the TMH. At that moment, he had become uncooperative, and tried to stand up from the stretcher with the intention of hitting M.G. in the head. M.E. had then called the police for support. He claimed that the applicant had been aggressive in the hospitals as well.

30. A. and B., the other two members of the ambulance team (see paragraph 6 above), were also interviewed by the prosecutor. Their statements were similar to those given by M.E. and M.G.

31. The prosecutor's office also received the TPH records (see paragraph 18 above) and the police report on the events of 30 March 2017, whereby it had been recorded that the applicant "[had been] aggressive and [had] refused a medical examination".

32. On 22 May 2018 the prosecutor's office decided to end the investigation (*clasarea sesizării*). In so far as E.P. was concerned, the prosecutor considered that the evidence did not support the applicant's allegations. The prosecutor's office reached the same conclusion concerning the allegations against the paramedics. The reasoning in this respect reads as follows:

> "In the light of the above [reference to the description of the witness statements and medical evidence], the allegations about the ambulance team cannot be accepted, as they are not supported by evidence."

33. On 9 July 2018, following an objection lodged by the applicant, that decision was upheld by the prosecutor-in-chief of the same prosecutor's office. The applicant was also ordered to pay 50 Romanian lei (RON, approximately 10 euros (EUR) at that time) representing costs.

III. COMPLAINT LODGED WITH THE NATIONAL COURTS

34. The applicant lodged a complaint with the Timişoara District Court against the decision of the prosecutor's office of 9 July 2018 (see paragraph 33 above), arguing that the prosecutor had failed to investigate the case properly. In particular, no relevant evidence had been collected and the decision had been based exclusively on the statements made by the persons under investigation. He also complained that the medical evidence had been disregarded, even though it had proved without doubt that because of his medical condition at that time, he could not have been violent with the paramedics or the police. He appended to his request the statement made by his diabetologist (see paragraph 25 above). The applicant reiterated that, in his view, he had been the victim of aggravated deprivation of liberty and of attempted murder, the latter insofar as his life had been put in danger by the refusal to administer emergency medical treatment.

35. On 23 August 2018 the pre-trial judge of the Timişoara District Court upheld the prosecutor's decision, holding that the evidence presented by the prosecutor had not supported the applicant's allegations. The applicant was also ordered to pay RON 50 (approximately EUR 10 at that time) to the State, representing costs, and RON 500 (approximately EUR 100 at that time) to each of the five persons he had named in his complaint: the four members of the ambulance team and the police officer he had accused, representing their lawyers' fees.

36. On 29 November 2018 the Timişoara Court of Appeal declared inadmissible an appeal lodged by the applicant as the decision in question was final and not amenable to appeal. The applicant was ordered to pay RON 100 (approximately EUR 20 at that time) to the State, representing costs, and RON 500 (approximately EUR 100) to each of the five accused persons, representing lawyer's fees.

IV. COMPLAINT LODGED WITH THE DIRECTORATE FOR PUBLIC HEALTH

37. On 22 May 2017 the applicant lodged a complaint with the Directorate for Public Health of County Timiş. He reiterated his allegations

of professional misconduct and violence at the hands of the medical professionals who had received him on 30 March 2017.

38. On 20 June 2017 the Directorate for Public Health informed the applicant that the medical records issued by the hospitals had not confirmed his allegations. It also informed him that his allegations concerning medical negligence had been forwarded to the Commission for Monitoring and Professional Competence.

39. On 3 July 2017 the Commission informed the applicant that he was required to pay RON 9,000 (approximately EUR 1,900 at that time) for experts' fees. The fee was due within five working days.

40. The applicant could not afford to pay the fee, which exceeded his monthly income at the time (RON 375, approximately EUR 80, from disability benefits).

RELEVANT LEGAL FRAMEWORK

41. The relevant provisions of the Code of Criminal Procedure concerning the possibility of attaching a civil claim to a criminal complaint read as follows:

Article 20

"(1) A victim may bring civil claims during criminal proceedings until the court has started hearing the case [*cercetarea judecătorească*]. The judicial authorities must inform the victim of this right."

Article 376

"(1) The court starts hearing the case when the case is ready for examination."

42. Article 31 of the Police Act (Law 218/2002 on the organisation and functioning of the Romanian police) provides that police officers have, *inter alia*, a duty to:

"(b) escort to the police station anyone who, by his or her actions, poses a danger to others, to public order or other social values, as well as anyone suspected of having committed a criminal act and whose identity could not be verified in accordance with the law; ... the situation of such a person must be verified and legal measures taken, if necessary, within twenty-four hours, as an administrative measure;"...

43. Non-voluntary confinement is provided for by the Mental Health Act (Law no. 487 of 11 July 2002 on mental health and the protection of people with mental disorders) published in Official Gazette no. 589 of 8 August 2002. That law was amended by Law no. 600/2004 and subsequently by Law no. 129/2012. The relevant provisions read as follows:

Article 12

"Evaluation of an individual's mental health is carried out at that individual's request, in the case of voluntary confinement in a psychiatric unit, or, in the case of non-voluntary admission, at the request of the persons mentioned in Article 56."

Article 49

"(1) An individual will be admitted to a psychiatric unit only for medical reasons, that is for diagnosis and treatment."

Article 56

"(1) Non-voluntary admission must be requested by:

(a) the family doctor or the psychiatrist who is treating the individual in question;

(b) the family of the individual concerned;

(c) representatives of the local administration responsible for socio-medical issues or public order;

(d) the police, gendarmerie, fire department, or prosecutor;

(e) a civil court, if it considers that the person appearing before it requires hospitalisation for mental health issues.

(2) The reasons for confinement must be certified in writing by the persons listed in paragraph (1) above, specifying their own identity data, the circumstances which led to the request for confinement, the identity data of the individual whose confinement is requested and his or her medical record."

Article 57

"(1) Transportation to the psychiatric hospital is normally done by ambulance. If the behaviour of the individual in question renders him or her dangerous for himself or others, transportation to the psychiatric hospital is done by the police, gendarmerie or fire department ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

44. The applicant complained under Articles 2 and 6 § 1 of the Convention that the actions of the ambulance team and the hospital personnel, who had withheld treatment from him on 30 March 2017, had put his life in danger. He further complained that the investigation and ensuing criminal proceedings into those events had not been fair.

45. The Court, being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, ECHR 2018), considers that this complaint should be examined from the standpoint of Article 2 of the Convention alone, which reads, in so far as relevant:

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

46. The Court will first look into the manner in which the authorities investigated the allegations made by the applicant concerning the incidents of 30 March 2017.

A. Procedural obligation to investigate

1. Admissibility

(a) The Court's jurisdiction *ratione materiae*

47. At the outset, the Court reiterates that as the question of applicability is an issue of its jurisdiction *ratione materiae*, the general rule of dealing with applications should be complied with and the relevant analysis carried out at the admissibility stage unless there is a particular reason to join this question to the merits (see *Denisov v. Ukraine* [GC], no. 76639/11, § 93, 25 September 2018). No such particular reason exists in the present case and the issue of the applicability of Article 2 of the Convention falls to be examined at the admissibility stage.

(i) General principles

48. The Court notes that Article 2 of the Convention may come into play even though the person whose right to life was allegedly breached did not die. For a comprehensive summary of the relevant principles, the Court refers to its most recent case-law in the matter, notably *Nicolae Virgiliu Tănase v. Romania* ([GC], no. 41720/13, §§ 134-45, 25 June 2019).

49. The Court reiterates that the allegations of persons suffering from serious illnesses fall under Article 2 of the Convention when the circumstances potentially engage the responsibility of the State (see, for instance, *L.C.B. v. the United Kingdom*, 9 June 1998, §§ 36-41, *Reports of Judgments and Decisions* 1998-III, concerning an applicant suffering from leukaemia; *G.N. and Others v. Italy*, no. 43134/05, §§ 69-70, 1 December 2009, concerning applicants suffering from a potentially life-threatening disease, hepatitis; and *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, §§ 8 and 106-08, ECHR 2012 (extracts), concerning applicants suffering from different forms of terminal cancer). In this regard, where the victim was not killed but survived and where he or she does not allege any intent to kill, the criteria for a complaint to be examined under this aspect of Article 2 are, firstly, whether the person was the victim of an activity, whether public or private, which by its very nature put his or her life at real and imminent risk and, secondly, whether he or she has suffered injuries that appear life-threatening as they occur. Other factors, such as whether escaping death was purely fortuitous, may also come into play. The Court's assessment depends on the circumstances. While there is no general rule, it appears that if the activity involved by its very nature is dangerous and puts

a person's life at real and imminent risk, the level of injuries sustained may not be decisive and, in the absence of injuries, a complaint in such cases may still fall to be examined under Article 2 (see *Nicolae Virgiliu Tănase*, cited above, § 140, with further references).

50. The Court has further held that an issue may arise under Article 2 where it is shown that the authorities of a Contracting State have put an individual's life at risk through the denial of the health care which they have undertaken to make available to the population generally (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 173, 19 December 2017).

(ii) Application of those principles to the facts of the present case

51. Turning to the facts of the present case, the Court observes that the applicant suffered from type-1 diabetes; he was insulin dependent and his condition was serious enough to justify the granting of disability benefits (see paragraph 4 above). He followed an intensive insulin treatment (see paragraph 25 above). Moreover, it appears from his medical history that he had already fallen into a coma as a result of an imbalance in his blood-sugar level (see paragraph 24 above). The medical records from the TPH of 30 March 2017 indicate that he needed rebalance of his blood sugar level (see paragraph 18 above).

52. Furthermore, the elements in the file, as presented by the applicant, indicate that the latter and his wife had duly informed all those involved – paramedics, police officers, medical personnel in the TMH and TPH – about his condition and the urgent need for medication (see paragraphs 6, 9, 10 and 14 above respectively). Moreover, his diabetologist had tried to speak with the hospital doctors, but her intervention had been ignored (see paragraphs 13 and 25 above). The Government did not provide a sustainable alternative version of these facts.

53. Given the scarcity of available evidence, the Court cannot speculate as to the exact effect on the applicant of the delayed insulin treatment on 30 March 2017 or whether his own behaviour – notably his refusal to submit to a drugs test – had contributed decisively to it. However, it cannot but note that very high blood sugar levels can lead to diabetic ketoacidosis, which is a life threatening condition to be treated in the hospital. Moreover, this condition, which is commonly triggered by infections, can develop quickly over a few hours. Given the nature of the applicant's illness and the absence of any conclusive evidence submitted by the Government that his life had not been put in danger, the Court considers that the denial of treatment on 30 March 2017 caused a threat to his life serious enough to engage the State's responsibility under Article 2 (see, *mutatis mutandis* and in the ambit of Article 3 of the Convention, *Iustin Robertino Micu v. Romania*, no. 41040/11, § 74, 13 January 2015).

(b) Other grounds for inadmissibility

54. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

(i) The applicant

55. As for the system of remedies put in place by the respondent State, the applicant pointed out that a criminal investigation had been the only suitable course of action. In fact, his attempt to hold the medical personnel liable before their professional body had failed because of the excessive fees imposed on him by the Commission of Monitoring and Professional Competence (see paragraphs 39 and 40 above). Moreover, civil proceedings in tort against those involved in the incidents had not been available to him, as he would have been required to prove the fault of those involved. In order to obtain that evidence, he would have needed to seek the advice of the Commission, but he could not afford the costs of those proceedings.

56. Consequently, his only realistic option had been to attach civil claims to his criminal complaint. In lodging his criminal complaint, he had had the reasonable expectation that he would be able to attach his civil claims and thus obtain compensation. In practice, however, that remedy had failed. The investigation had not been thorough and the complaint had been dismissed based exclusively on the statements made by those under investigation and on the medical records provided by the hospitals involved.

57. Lastly, the applicant submitted that the length of the investigation had been excessive, given what had been at stake for him and for all users of the healthcare system.

(ii) The Government

58. The Government averred that the applicant had been unable to support his allegations with sufficient evidence before the domestic authorities. They also deplored the fact that he had failed to pursue the procedure before the Commission of Monitoring and Professional Competence (see paragraph 38 above).

59. The Government also pointed out that nothing in the file indicated that the medical personnel had verified on 30 March 2017 the applicant's diagnosis and treatment.

(b) The Court's assessment

(i) The general principles

60. The Court makes reference to the general principles set out in its case-law concerning the positive obligations incumbent on States in the field of medical care, in particular concerning the obligation to investigate when allegations of medical negligence are made. They have been recently reiterated in *Lopes de Sousa Fernandes* (cited above, §§ 214-21).

61. The Court reiterates that it has interpreted the procedural obligation of Article 2 in the context of healthcare as requiring States to set up an effective and independent judicial system so that the cause of death or serious physical injury of patients in the care of the medical profession, whether in the public or the private sector, can be determined and those responsible held accountable (ibid., § 214, with further references).

62. When an investigation is required, it must be independent, adequate, speedy, thorough and effective, in the sense that could be said to have constituted legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim (*Lopes de Sousa Fernandes*, §§ 217-19, as well as *Nicolae Virgiliu Tănase*, cited above, §§ 165-70).

63. The Court reiterates that the choice of means for ensuring that the positive obligations under Article 2 are fulfilled is in principle a matter that falls within the Contracting State's margin of appreciation. There are different avenues for ensuring that Convention rights are respected, and even if the State has failed to apply one particular measure provided by domestic law, it may still fulfil its positive duty by other means. However, for this obligation to be satisfied, such proceedings must not only exist in theory but also operate effectively in practice (see *Lopes de Sousa Fernandes*, cited above, § 216, with further references, and *Nicolae Virgiliu Tănase*, cited above, § 169).

64. Lastly, the Court stresses that this procedural obligation is not an obligation of result, but only one of means. Thus, the mere fact that proceedings concerning medical negligence have ended unfavourably for the person concerned does not in itself mean that the respondent State has failed in its positive obligation under Article 2 of the Convention (see *Lopes de Sousa Fernandes*, cited above, § 221, with further references).

(ii) Application of those principles to the facts of the present case

65. The Court notes that the applicant lodged a criminal complaint and described in great detail how he considered that his life had been put at risk on 30 March 2017 (see paragraph 20 above). In accordance with the applicable law (see paragraph 41 above), he had the possibility of raising his civil claims at any stage of the criminal proceedings, up to the date on

which the court started hearing the case. However, the proceedings did not reach that stage.

66. In respect of Romania, the Court has previously concluded, in the particular circumstances of the case of *Csoma v. Romania* (no. 8759/05, § 54, 15 January 2013, concerning allegations of grievous unintentional bodily harm and negligence in the conduct of the medical profession), that a civil claim attached to a criminal complaint could lead to an assessment of and compensation for the damage suffered.

67. In this regard, the Court held that an applicant who had pursued criminal proceedings, reasonably expecting that he or she would be able to raise civil claims in the criminal case, was not obliged to embark on a separate civil or disciplinary action (see *Elena Cojocaru v. Romania*, no. 74114/12, §§ 80 and 123, 22 March 2016). The Court does not see any reasons to reach a different conclusion in the present case.

68. As for the manner in which the investigation took place, the Court notes that the prosecutor only heard evidence from the four members of the ambulance team and from the applicant (see paragraphs 26 and 28-30 above). It appears that no independent witness was heard. The Court notes that several other individuals were involved in the incidents of 30 March 2017: the pharmacists, the police officers, the applicant's wife, his regular doctor C.H., and the medical personnel at the two hospitals that the applicant was taken to against his will that day. None of them seem to have been interviewed by the investigators. Moreover, the out-of-court statement made by C.H. (see paragraph 25 above) did not seem to have been taken into account by the prosecutor or the court, although it was expressly brought at least to the court's attention (see paragraph 34 above).

69. The Court further notes that, although the applicant's medical condition was a key element in the incidents of 30 March 2017, no expert medical evidence seems to have been requested by the prosecutor. In particular, several elements in the events of 30 March 2017 should have alerted the investigators to the need for further clarifications. It appears certain that the treatment was postponed only because of suspicions of drug abuse. There was already an imbalance in the applicant's blood glucose level when the first test was carried out by the ambulance team (see paragraph 6 above). Moreover, the medical personnel were diligently informed that he was a diabetic in need of insulin (see paragraphs 6, 9, 10 and 14 above) and none of the doctors who saw the applicant on that day denied that he needed it. There is no evidence in the file supporting the Government's assertion that the doctors were unaware of his medical condition (see paragraph 59 above). However, if that was indeed the case, far from being imputable to the applicant, such an omission on the part of the medical personnel would amount to an admission of professional misconduct, which could have put the applicant's life at risk. At the least,

these aspects should have called for a more thorough investigation by the authorities.

70. In addition, the District Court, which was called on to examine the prosecutor's decision, merely upheld that decision based on the evidence already in the file (see paragraph 35 above), without taking the opportunity to complete the investigation or to ask the prosecutor to do so.

71. Having regard to the above-mentioned deficiencies identified in the investigation, the Court concludes that the State authorities failed to conduct a proper investigation into the incident of 30 March 2017.

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

B. Obligation to protect the applicant's life

73. At the same time, the Court considers that the gross deficiencies identified in the domestic investigation make it impossible to assess whether the State complied with its positive obligation to protect the applicant's life. For that reason, the Court will not make a separate assessment of the admissibility and merits of this part of the complaint.

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

74. The applicant complained that he had been deprived of his liberty in an unlawful manner by the ambulance team with the assistance of the police. He relied on Article 5 § 1 of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> ..."

A. Admissibility

1. *The Court's jurisdiction* ratione materiae

(a) The parties' submissions

75. The applicant argued that on 30 March 2017 he had been held against his will by ambulance personnel and the police, for about six hours. He reiterated that he was a vulnerable person because of his severe disability, and had been in urgent need of medication, which had been withheld by the authorities throughout his confinement. Because of his personal situation, the confinement had gone beyond a simple restriction of his freedom of movement and had constituted deprivation of liberty within the meaning of Article 5 of the Convention.

76. The Government made no submissions in this respect.

(b) The Court's assessment

77. In the absence of any particular reason to join to the merits the question of applicability, the Court will examine it at the admissibility stage (see *Denisov*, cited above, § 93, as well as paragraph 47 above).

(i) General principles

78. The Court reiterates that in proclaiming the "right to liberty", paragraph 1 of Article 5 contemplates the physical liberty of the person. Accordingly, it is not concerned with mere restrictions on liberty of movement, which are governed by Article 2 of Protocol No. 4. In order to determine whether someone has been "deprived of his liberty" within the meaning of Article 5, the starting-point must be his or her specific situation and account must be taken of a whole range of factors such as the type, duration, effects and manner of implementation of the measure in question. The difference between deprivation and restriction of liberty is one of degree or intensity, and not one of nature or substance (see *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, §§ 211-212, 21 November 2019, *De Tommaso v. Italy* [GC], no. 43395/09, § 80, ECHR 2017 (extracts), with further references, and *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 64, ECHR 2016 (extracts)).

79. The characterisation or lack of characterisation given by a State to a factual situation cannot decisively affect the Court's conclusion as to the existence of a deprivation of liberty (see *Creangă v. Romania* [GC], no. 29226/03, § 92, 23 February 2012).

80. The Court reiterates its established case-law to the effect that Article 5 § 1 may also apply to deprivations of liberty of a very short length (see, among many authorities, *M.A. v. Cyprus*, no. 41872/10, § 190, ECHR 2013 (extracts)).

(ii) Application of those principles to the facts of the present case

81. The Court has already established in its case-law that the taking of a person by the police to a psychiatric hospital against his or her will amounts to "deprivation of liberty" (see *Ulisei Grosu v. Romania*, no. 60113/12, §§ 27-32, 22 March 2016). In the present case, there is nothing to suggest that, as a matter of fact, the applicant could have freely decided not to accompany the paramedics and police officers to the hospitals or that, once there, he could have left at any time without incurring adverse consequences (ibid., § 28).

82. The Court considers that throughout the events there was an element of coercion which, notwithstanding the relatively short duration of the events, that is about six hours (see paragraph 19 above), was indicative of a deprivation of liberty within the meaning of Article 5 § 1.

83. Consequently, the Court finds that the applicant was deprived of his liberty within the meaning of Article 5 § 1 and the Court is thus competent *ratione materiae* to hear the case.

2. Other grounds for inadmissibility

84. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicant

85. The applicant submitted that he had never received a copy of the record of his confinement. To date, he had not been informed of the legal grounds for his deprivation of liberty. The Government had not provided any information on that matter either. His deprivation of liberty on 30 March 2017 had therefore lacked any legal basis and had not been carried out in accordance with any procedure prescribed by law.

86. The applicant argued that his deprivation of liberty could not be justified under any of the grounds enumerated in Article 5 § 1 of the Convention. In particular, he rejected the application of Article 5 § 1 (e). He considered that he did not fall under any of the categories enumerated in that provision.

87. Lastly, the applicant argued that he had been under no obligation to undergo drug testing, which could not be done without the patient's prior consent.

(b) The Government

88. The Government argued that the applicant had been taken to the hospitals because he had been agitated and aggressive. They reiterated that he had not been able to support his allegations with sufficient evidence before the domestic authorities.

2. The Court's assessment

(a) General principles

89. Any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f) of Article 5 § 1, be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of that law (see *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 135, 4 December 2018, and *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 74, 22 October 2018).

90. In laying down that any deprivation of liberty must be effected "in accordance with a procedure prescribed by law", Article 5 § 1 primarily requires any arrest or detention to have a legal basis in domestic law. However, these words do not merely refer back to domestic law. They also relate to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all Articles of the Convention. On this last point, the Court stresses that where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Khlaifia*, cited above, §§ 91-92, and *Del Río Prada v. Spain* [GC], no. 42750/09, § 125, ECHR 2013, with further references).

91. Lastly, the Court reiterates that in order for deprivation of liberty under sub-paragraphs (b), (c), (d) and (e) of Article 5 to be considered free from arbitrariness, it does not suffice that this measure is executed in conformity with national law; it must also be necessary, in the circumstances, to achieve the stated aim (see *S., V. and A. v. Denmark*, cited above, § 77).

(b) Application of those principles to the facts of the present case

92. Turning to the facts of the present case, the Court notes that no legal basis was offered by the authorities for the applicant's deprivation of liberty. The applicant had duly brought his grievance to the authorities' attention (see notably paragraph 34 above), but received no answer from them. The Government have not stated that this procedure was manifestly devoid of purpose in the context of the specific issues relating to Article 5 § 1 of the Convention (see, *mutatis mutandis*, *Tsvetkova and Others v. Russia*, nos. 54381/08 and 5 others, § 100, 10 April 2018).

93. The Court will now turn to the possible reasons that could have justified the applicant's deprivation of liberty.

94. Firstly, concerning the grounds permitted by Article 5 § 1 (c) of the Convention, the Court notes that, under domestic law, an individual suspected of having committed a criminal act could have been escorted to the police station if his identity could not be verified (see paragraph 42 above). In her statements to the police (see paragraph 28 above), M.E. hinted that the applicant had refused to state his identity, but her assertion remained unsupported by evidence. There is nothing in the domestic decisions leading the Court to believe that the applicant would have refused to state his identity. On the contrary, according to his statements, he informed the medical personnel of his medical condition and even asked the paramedics to accompany him to his home so that he could take his insulin (see paragraph 6 above). The Court considers that this is incompatible with any attempt to hide his identity or refusal to reveal it. Moreover, no legal actions seem to have been taken in this respect. It does not appear that the police asked for his identity papers. They simply accompanied the ambulance to the hospitals.

95. Furthermore, the Court notes that the domestic authorities (see paragraph 22 above) and the Government in their submissions (see paragraph 88 above) alleged that the applicant had been verbally abusive and aggressive towards the police officers and the medical personnel. However, it is to be noted that those allegations had been dismissed as unfounded by the Timişoara District Court (see paragraph 22 above). As the District Court was the only court that examined the applicant's alleged transgressions, the Court cannot but follow its assessment and thus conclude that the applicant had not been aggressive on that day. Consequently, his deprivation of liberty could not have been justified on those grounds.

96. The Court must also examine, despite the applicant's objections (see paragraph 86 above), whether his appearance and behaviour could have justified his deprivation of liberty on the grounds listed under Article 5 § 1 (e) of the Convention.

97. In this context, the Court notes that under domestic legislation, the police or medical personnel may request the non-voluntary admission to a psychiatric hospital (see paragraph 43 above). However, in the present case,

no such official request seems to have been made. Nor was there any request by the applicant's doctor in this respect. The only act which may pass as such a request is the decision of the doctor on duty to send the applicant to the TPH after his initial admission to the TMH (see paragraph 11 above). However, even assuming that that would be sufficient for the purpose of the Mental Health Act, the Court reiterates that in order for deprivation of liberty to be considered free from arbitrariness, it does not suffice that this measure is executed in conformity with national law; it must also be necessary in the circumstances (see the case-law cited in paragraph 91 above).

98. Turning to the necessity of the measure, the Court observes that a first blood test, confirming the applicant's blood sugar levels, had already been done by the ambulance paramedics (see paragraph 6 above). Moreover, the applicant informed O.T. of his condition upon admission to the TMH (see paragraph 10 above). The Court also notes that the applicant did not have a psychiatric record and that the domestic courts found that he had not been violent during the incident (see paragraph 22 above and, *mutatis mutandis*, *Ulisei Grosu*, cited above, § 52 *in fine*).

99. The Court accepts that the applicant, faced with a denial of treatment that he considered vital for him, could have been uncooperative. However, it cannot but note that not only was he denied treatment, but he was also falsely accused of drug use and threatened with psychiatric confinement. Throughout that time, he was suffering from an imbalance in his blood sugar level. A certain state of discomfort and agitation is thus understandable in those circumstances. However, there is no evidence that the medical professionals had considered his personal circumstances and the possible explanations for his behaviour before recommending admission to the psychiatric hospital. Consequently, the Court considers that the applicant's alleged agitation was not sufficient to render the measure of confinement necessary. Finally, it has not been suggested by the Government that the applicant's deprivation of liberty was justified under sub-paragraphs (a), (b), (d) or (f) of Article 5 § 1, and the Court sees no reason to hold otherwise.

100. For these reasons, the Court is not satisfied that the applicant's deprivation of liberty on 30 March 2017 was free from arbitrariness and in compliance with domestic law. Consequently, the deprivation of his liberty was neither falling within one of the exceptions set out in sub-paragraphs (a) to (f) of Article 5 § 1, nor "lawful" within the meaning of that provision.

It follows that there has been a violation of Article 5 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. Article 41 of the Convention provides:

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

A. Damage

102. The applicant claimed 5,200 Romanian lei (RON) (approximately 1,040 euros (EUR) at that time) in respect of pecuniary damage, representing costs he had been ordered to pay in the domestic proceedings. He sent invoices attesting to the respective payments.

He also claimed:

- EUR 234,000 in respect of non-pecuniary damage incurred on account of the violation of Article 2 of the Convention; and
- EUR 50,000 in respect of non-pecuniary damage incurred on account of the violation of Article 5 § 1 of the Convention.

103. The Government asked the Court not to award any sum which had not been proved to have a causal link to the violations found. They further argued that the claims in respect of non-pecuniary damage were exaggerated and asked the Court to take into account the sums it had awarded in the past in similar cases.

104. The Court recalls that it has found, *inter alia*, a violation of the procedural limb of Article 2 of the Convention by reason of the authorities' failure to conduct a proper investigation into the incident of 30 March 2017 (see paragraph 71 above). The Court has not, however, indicated what the result of a proper investigation should or could have been. Under these circumstances, it considers that the applicant has not demonstrated the existence of a causal link between the violation found and the costs he had been ordered to pay in the domestic proceedings and therefore rejects the claim for pecuniary damage. The Court, however, considers that the applicant must have sustained non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Having regard to the nature of the violations found, and making its assessment on an equitable basis, the Court awards the applicant EUR 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

105. The applicant also claimed RON 82.05, (approximately EUR 17 at that time) for the costs and expenses incurred before the Court, notably for postage. He pointed out that his lawyer had provided representation *pro bono* in the proceedings.

106. The Government did not oppose an award under this head, should the costs be found to have been necessary for the procedure before the Court.

107. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 17 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under the procedural limb of Article 2 of the Convention and the complaint under Article 5 § 1 of the Convention admissible;

2. *Holds* that there has been a violation of the procedural limb of Article 2 of the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the complaint under the substantive limb of Article 2 of the Convention, concerning the State's obligation to protect the applicant's life;

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

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 17 (seventeen 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;

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

Done in English, and notified in writing on 26 May 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Jon Fridrik Kjølbro
Registrar	President