

ROMANIA: The ‘legal black hole’ for children in institutions

Summary

Abandoned by his mother at birth, Valentin Câmpeanu was left to grow up in a Romanian orphanage. As a HIV-positive Roma orphan with severe disabilities, Câmpeanu fell victim to a staggering level of institutional neglect, ultimately resulting in his death. The Center for Legal Resources and INTERIGHTS brought a case to the European Court of Human Rights to get accountability for the way he was treated and to help prevent similar abuses, paving the way for other NGOs to bring similar cases in the future.

Background

Valentin Câmpeanu, a child of Roma descent, was abandoned at birth in 1985 and left in a Romanian orphanage. Here, according to court documents he was quickly diagnosed with a “profound intellectual disability, an IQ of 30 and HIV”, meaning that he would have a variety of care needs throughout his life. Câmpeanu was moved from institution to institution throughout his childhood, but his life changed at age 17 when a child protection panel ordered that, as he would no longer be a minor under State protection, he should be sent to a residential institution as soon as he turned 18. Câmpeanu was neither present nor represented at this hearing.

Despite being repeatedly refused admission to several institutions, Câmpeanu ended up in Poiana Mare Psychiatric Hospital. He was admitted after his conditions were re-diagnosed, with the seriousness of his disabilities downplayed to make it more likely that one of the two institutions which had previously refused to care for him would now take him as a patient.

These kinds of institutions were notorious in Romania for poor standards of care, appalling living conditions and, several times in recent history, spikes in the deaths of patients during Romania’s unforgiving winters. Poiana Mare Psychiatric Hospital, [a former military barracks](#), was one such institution. In 2004 there were reports that 17 people died in the hospital from [starvation, or as a result of the extreme cold](#). When the state prosecutor’s office investigated it found that this was not unusual for Poiana Mare. In fact, in 2003, more than 80 people starved or froze to death.

On 20 February 2004 the Center for Legal Resources (CLR), an NGO monitoring the conditions in Romanian institutions, sent a group of staff to inspect Poiana Mare. Georgiana

Pascu, Programme Manager at the Center for Legal Resources [explained her first impressions](#) after the five hour journey from Bucharest.

“As I first entered the building I could not believe what I saw. I had never seen so many people who were so small and so skinny. These people had been abandoned in this hospital and I believe they had been in the hospital for at least half of their lives.

“When I turned around on my left there was a young man lying in bed covered in a blanket up to his chest. As I reached for the blanket a doctor yelled at me: ‘Don’t touch him! He has AIDS!’”

That young man was Câmpeanu. Alone, dressed only in a pyjama top and left in an isolated, unheated room, with no furniture but his bed. The CLR team was later told that staff at the institution feared contracting HIV from Câmpeanu and, despite his need for assistance, refused to feed him or help him go to the toilet. An IV drip of glucose and vitamins was his only source of sustenance. A week before the CLR’s visit Câmpeanu reportedly weighed 45 kilograms - 16 kilograms short of the healthy weight range for a person his size.

Shocked at what they were seeing, the CLR staff asked for Câmpeanu to be moved to the Infectious Diseases Hospital in Craiova, some 90 kilometres away, where he could receive treatment for his malnutrition. The hospital’s manager refused, claiming that Câmpeanu was a “social case” and arguing that at that stage he would not survive the trip. Pascu recalled asking: “Why doesn’t he receive any medication? Is he sedated? Why doesn’t he say anything?” emphasising that “his days seemed numbered given these conditions.”

The CLR team left Poiana Mare with Câmpeanu still locked in isolation, and he died that same night. No autopsy was carried out to determine the cause of his death despite the law requiring one. When his death certificate was issued on 23 February the cause of death was listed as “cardiorespiratory insufficiency”, noting his HIV infection as the “original morbid condition” and his “intellectual disability” as another “important morbid condition”.

On 21 February 2004 the CLR, unaware of Câmpeanu’s death, sent urgent letters to officials, including the Minister of Health, the mayor of Poiana Mare and the director of the region’s Public Health Department. They called for Câmpeanu to receive the care he needed and for an investigation into his transfer to Poiana Mare to be initiated, to explain why he had been moved from a care centre to a psychiatric hospital a week earlier. However, news of Câmpeanu’s death soon reached them.

Domestic court cases and investigations

Having no known next of kin and no State-appointed guardian Câmpeanu was almost forgotten about by the State at this stage, as it seemed nobody would be willing or able to complain on his behalf. The CLR refused to let the neglect they had witnessed go unpunished though, and fought for several years to get justice for Câmpeanu in the national courts. This situation was unusual as normally only close relatives could represent a person

who was dead, but as Câmpeanu had no known next of kin to seek any kind of symbolic redress the CLR was allowed to take up his case before the domestic courts.

While the case was being heard in Romania's courts a national commission was established to investigate Câmpeanu's death. The national authorities for child protection and adoption both concluded that there had been no breach of Câmpeanu's rights, as the appropriate procedures had generally been followed at Poiana Mare. Romania's Medical Association later agreed there was no need to take disciplinary action against any hospital staff.

Despite these findings the [European Committee for the Prevention of Torture](#) (CPT) issued a report in 2004 about the suspicious deaths of 109 patients at the institution during the winters of 2003 and 2004. These deaths, including Câmpeanu's, were listed as suspicious and were mostly diagnosed as cardiac arrest, heart attacks and bronchopneumonia. The average age of the patients who died was 56, but a number of them were aged under 40.

The CPT found that some of the patients were not given sufficient care and noted deficiencies in human and material resources, the quantity of food given to patients and made note of the facility's lack of heating. In response to a letter by the UN Special Rapporteur on the right to health in March 2004 expressing concerns about Poiana Mare, the Romanian Government vowed to improve conditions there, and across the country.

During this time the CLR also obtained an expert opinion from the International Federation of Health and Human Rights Organisations to strengthen their case, which explained that at Poiana Mare, Câmpeanu had never been consulted by an infectious disease specialist, and pointed out that he may have suffered from HIV-related pneumonia, concluding that his death had been [the result of gross medical negligence](#).

Despite the evidence in their favour the CLR failed to convince Romania's courts of the hospital's liability or the total failure to investigate the suspicious circumstances of Câmpeanu's death. While the courts had recognised the CLR's standing to represent Câmpeanu in this case, they dismissed the NGO's complaints related to a breach of his right to life, seemingly happy to let the death of one of Poiana Mare's patients go unpunished.

Bringing the case to the European Court of Human Rights

Although the case seemed hopeless there was a chance that going to an international court would yield a different result. The question was: if a victim of a serious rights abuse has no next of kin, can an NGO represent them? While the European Court of Human Rights had never allowed a complaint from an NGO before, in [at least one previous case](#) the court had ruled that an immediate relative could take up a case on behalf of someone who had died during proceedings.

The CLR partnered with INTERIGHTS, a human rights NGO based in London which had experience bringing cases before the European Court of Human Rights (ECHR), and worked with Romanian lawyer Constantin Cojocariu to put together a case. Cojocariu was familiar with the reports of spiking death rates in Romanian institutions, had expertise in the area of

disability rights and had been thinking about ways to bring the case before he was assigned to work on it by INTERIGHTS.

By the time the organisations agreed to launch a challenge before the ECHR they did not have much time to prepare. Cojocariu took advice from colleagues, many of whom were pessimistic about his chances, and formed the case in just under six months. In October 2008 the case was filed with the court and both NGOs waited to see what would happen. At the time NGOs could not bring cases on behalf of individuals who were dead or otherwise unable, and few people expected this rule to change. The court already had a backlog of unheard petitions, and would not be helping its judges by adding a raft of potential cases.

“Asking the court to reform its admissibility criteria was seen as an almost intractable problem and everybody was quite pessimistic about our chances,” recalled Cojocariu. Despite the air of pessimism about the case, the Romanian courts had heard it, and international courts would be wary of dismissing it if that would suggest that they provided a lower level of human rights protection than national bodies.

Thankfully, the case was successfully communicated and the examination of the facts began, making it much less likely to be dismissed. After this the view of the CLR and INTERIGHTS’ case became more optimistic. They quickly attracted third party interventions from leading human rights organisations including [Mental Disability Advocacy Centre](#), the [Bulgarian Helsinki Committee](#) and [Human Rights Watch](#). Critically, the Council of Europe’s Commissioner for Human Rights at the time, Thomas Hammarberg, [weighed in of his own accord](#), the first time anyone in the role had done so.

The Commissioner’s intervention noted the lack of access to justice for people with mental disabilities in particular and claimed that failing to adapt admissibility criteria “would have the undesired effect of depriving a particularly vulnerable group of any reasonable prospect of seeking and obtaining redress for violations of their human rights”.

Hammarberg concluded: “in order to prevent and put an end to these abuses, the important role played by NGOs in shedding light on the human rights violations experienced by vulnerable persons and facilitating the latter’s access to justice must be officially recognised. Allowing NGOs to lodge applications with the Court on behalf of persons with disabilities is fully in line with the principle of effectiveness in which the Convention is grounded.”

The submissions from well-known third parties raised the profile of the case and soon the CLR and INTERIGHTS’ case had been referred to the Grand Chamber of the court for a full hearing. They had won the battle to be heard, but it was unclear whether or not their case would convince the judges of the serious allegations against Romania.

Outcome

While the court recognised that the circumstances raised a “difficult question of interpretation of the Convention” it ultimately found in the CLR’s favour. The court [unanimously found Romania responsible](#) for a violation of Câmpeanu’s right to life and for failing to provide

redress for his death. As the NGOs had no previous relationship with Câmpeanu they were not allowed to petition the court as an “indirect victim”, but the judges agreed that the CLR had standing to act as Câmpeanu’s “de facto representative”. The judges added that they attached “considerable significance” to the fact that domestic medical and judicial authorities had not challenged the CLR’s ability to bring a case on Câmpeanu’s behalf in the absence of next of kin or a legal guardian, suggesting that the national courts had effectively recognised the need for the NGOs to act as de facto representatives.

The judges held that despite presuming Câmpeanu had mental capacity, as shown by the choice not to appoint him a guardian, “no consent was obtained for the patient’s successive transfers from one medical unit to another...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”. As well as this the court reminded the government that, according to previous case law involving Romania: “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”.

The judges noted that in terms of how Câmpeanu was treated in his final days, there was contradictory evidence which the State was unable to refute with correct medical documentation. In light of confirmed reports about the high number of deaths at the facility in 2003 and 2004 it seemed obvious that “domestic authorities were therefore fully aware of the very difficult situation in the hospital.”

Citing the Romanian authorities’ previous knowledge about the facility’s lack of food, heating and sanitation, the judges held that they “unreasonably put his life in danger” with a lack of medical attention acting as “yet another decisive factor leading to his untimely death”, concurring that Romania had violated Câmpeanu’s right to life [in circumstances similar to a previous case](#).

Finally, the court turned to the claims that no meaningful investigation was carried out into Câmpeanu’s death. In a short but devastating segment the judgment noted that no autopsy was carried out after Câmpeanu died, that medical staff gave contradictory evidence during domestic proceedings, and that of 129 deaths at Poiana Mare reported from 2002 to 2004 nobody had been held liable for misconduct. As there was no way to achieve redress for the violations in Câmpeanu’s case the court held that there had also been a breach of his right to an effective remedy under [Article 13 of the European Convention on Human Rights](#).

As well as ordering it to pay costs to the CLR and INTERIGHTS, the Court instructed Romania to put in place measures to ensure that people with mental disabilities in situations similar to Câmpeanu were given independent representation, with the chance to have their complaints heard by a court or independent body.

“It was quite resounding” said Cojocariu, “They recognised that NGOs could represent an applicant with disabilities in the particular circumstances of this case, and that was a big win. But it was very disappointing because they made it look as if this was an extraordinary occurrence.”

Cojocariu noted that all of the third party interventions, each a vital part of the case, had stated that while Câmpeanu's situation was terrible, it was not rare in eastern Europe. Cojocariu's arguments convinced the judges that this case ought to be heard, but did not lead them to directly state that other such cases would be admissible. However, a separate written opinion was prepared by judge Pinto de Albuquerque, slamming the other judges for their tentative approach to reforming the court's admissibility criteria, claiming that they had encountered "an intolerable legal gap in the protection of human rights" and failed to act decisively.

He wrote: "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."

Impact

While the judges could have gone further and extended the admissibility criteria for others, the result still set an important precedent. Cojocariu, and everyone involved in the case, understood that the admissibility criteria of the court was unlikely to change drastically overnight. He explained: "Eventually, litigation plays a role in this bigger picture of reform. But there are different means to push for change. As long as advocates use litigation in conjunction with other methods it is more likely that something will change eventually."

"For me Câmpeanu was a representative case of helpless people disappearing into this institutional black hole in Romania, where people, humans, individuals, were dehumanised," explained Cojocariu. "They were not treated as human beings and so there was a complete lack of access to justice. There was powerlessness for them". Cojocariu noted that an independent monitoring mechanism had been created since the ruling, with the aim of providing reports to the UN Committee on the Rights of Persons with Disabilities about the country's institutions, but claimed that it could be years before the body has the expertise and authority to operate effectively.

He also noted that despite campaigns for an end to institutionalisation and a move towards community-based care there has been an increase in the number of privately run institutions and in the creation of new facilities for people with disabilities, shifting focus and scrutiny away from older, more notorious institutions. As part of the effort to make that change, the CLR also filed a separate case with the European Court of Human Rights, related to [other patients who died at Poiana Mare](#) around the same time as their case on behalf of Câmpeanu, in October 2009. While the alleged victims of neglect all died as adults several also spent the entirety of their childhoods in state-run institutions and were transferred to Poiana Mare once they reached 18, just like Câmpeanu.

The patients mentioned in the complaint were documented as enduring [similar conditions to Câmpeanu before their deaths](#), including freezing temperatures and lack of nutrition, though several were also noted to have been infested with lice prior to their death. While Cojocariu

knows that conditions have improved slightly at Poiana Mare, he said that there was still a long way to go with accountability nationally, and in terms of justice for people living in institutions across Europe.

“Nobody got punished, there was no sanction, the same people work at the hospital now who worked there at the time Câmpeanu was there,” he said. “What about people who don’t die but are stuck in institutions and have nobody to represent them? What if Câmpeanu hadn’t died that day when Centre for Legal Resource went on a monitoring visit?”

On top of the problems of staff impunity Cojocariu said that he fears that [new changes to the court's admissibility criteria](#) will disproportionately affect people with disabilities and people living in remote areas. One such change, proposed under an amendment being gradually accepted by signatories to the European Convention on Human Rights, involves shortening the window in which complaints can be communicated from six months after the end of domestic proceedings to just four months. For people shut away in disconnected, isolated rural facilities, the implications of increasingly strict admissibility criteria are all too obvious.

Before the European Court’s judgment Cojocariu and a team from media campaigning group [NMAP](#) went to Poiana Mare to find a picture of Câmpeanu, or to get a photo of his grave if nothing else was available. What they found summed up the culture of callousness and the scale of the problem faced by people confined within Romania’s institutions.

He explained: “We tried to find his grave in [the] hospital cemetery but you cannot tell who is buried where. There is nothing left about him. Which is a shame. His case is so important but we don’t know much about him. And there have been many, many faceless people like him. Just names who died or disappeared into this system.”

Further information

- Read CRIN's case summary of [Center for Legal Resources on behalf of Valentin Câmpeanu v. Romania](#).
- Find out more about [strategic litigation](#).
- See CRIN's [country page on Romania](#).
- Read CRIN's report on [access to justice for children in Romania](#).

CRIN's collection of case studies illustrates how strategic litigation works in practice by asking the people involved about their experiences. By sharing these stories we hope to encourage advocates around the world to consider [strategic litigation](#) to challenge children's rights violations. For more information, please visit: <https://www.crin.org/en/home/law/strategic-litigation/strategic-litigation-case-studies>.